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Petition of
William W. Watts
for Writ of Habeas Corpus and
Writ of Certiorari.

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Supreme Court of the United States.

To the Honorable, the Justices of the Supreme Court of the United States:

The petition of William W. Watts for a writ of habeas corpus and for a writ of certiorari.

1. The petitioner, William W. Watts, respectfully states that he is a citizen of the state of Kentucky, and a resident of the city of Louisville, in said state, and that he is now, and at all times hereinafter stated was, and for many years has been a practicing attorney-at-law.

The petitioner further states that he is wrongfully and unlawfully detained in custody by Robert Metzger, the sheriff of Marion county, in the state of Indiana, who is *ex officio* jailer of said county, and Henry C. Pettit, the marshal of the United States for the District of Indiana, and that he is now wrongfully and unlawfully, by the said persons, detained and imprisoned in the jail of said county. The said persons, namely, the said jailer and the said marshal arrested and placed the petitioner in custody and so continue to hold him in custody in said jail, under and by virtue of the authority of a certain order and judgment of the District Court of the United States, for the District of Indiana, made and entered by said court on the 14th day of March, A. D., 1903, which said order and judgment is as follows, to wit:

"United States

vs. No. 6377.

William W. Watts and D. A. Sachs.

"And afterwards, to wit, at the November term of said court, on the 14th day of March, 1903, before Hon-

orable Albert B. Anderson, judge of said court, the following further proceedings in the above entitled cause were had, to wit:

"Come now Joseph B. Keeling, Esquire, United States Attorney, and the defendants, William W. Watts and D. A. Sachs, in person, and by their respective attorneys also come, and, thereupon the court, having considered the evidence and argument of counsel, and being sufficiently advised in the premises, doth find that said defendants are guilty of the contempt charged. It is, therefore, considered by the court that said defendant, William W. Watts, for the offense charged, be imprisoned and confined in the jail of Marion county, Indiana, for the term of sixty days, and that he do pay unto the United States the costs of this proceeding, taxed at ——— dollars, and that he do stand committed until said costs are paid; and it is further considered by the court that said defendant, D. A. Sachs, for the offense charged, be imprisoned and confined in the jail of Marion county, Indiana, for the term of sixty days, and that he do pay unto the United States the costs of this proceeding, taxed at ——— dollars, and that he do stand committed until said costs are paid."

Upon said order and judgment a certain writ or mittimus was issued by the clerk of the said United States District Court, for the District of Indiana, which, together with the endorsement thereon, is as follows:

"United States of America, District of Indiana, ss.:

"President of the United States, to the Marshal of said District—Greeting:

"Whereas, by the judgment of the District Court of the United States, in and for said district, at the November term thereof, on the 14th day of March, A. D., 1903, William W. Watts, who, before in said court had been convicted of record of the crime of contempt

of court, was sentenced therefor to be imprisoned in the Marion county jail, in said district, for the term of sixty (60) days, and to pay unto the United States the costs of this prosecution, taxed at ——— dollars. You are, therefore, hereby commanded to deliver the body of said William W. Watts into the custody of the jailer of said prison, to undergo the execution of said sentence.

"Witness the Honorable Albert B. Anderson, judge of the District Court of the United States, for the District of Indiana, and the seal of said District Court, this 14th day of March, A. D., 1903.

"Noble C. Butler, Clerk.

"Endorsement: Case No. 6377. District Court of the United States, District of Indiana. United States v. William W. Watts. Warrant to marshal to deliver convict to Marion county jail. Keeling, United States Attorney."

The said order and judgment of the said United States District Court, for the District of Indiana, was and is wrongful and void, and the said court had no jurisdiction to make or enter it, and the making and entering thereof was and is beyond the power of the said court, and the said writ or mittimus was and is void.

2. Your petitioner further states that on the 30th day of December, 1902, Joseph T. Ryerson & Son filed their certain complaint in the Floyd Circuit Court of the State of Indiana against M. Zier & Co., defendant, and on the same day caused to be issued by the clerk of said Floyd Circuit Court, and there was duly issued by the said clerk, a summons upon the said complaint against M. Zier & Co., which said summons on the same day of its issuance came duly to the hands of the sheriff of Floyd county, Indiana, and was by him on the same day duly served on the defendant, M. Zier & Co. The said complaint of Joseph T.

Ryerson & Son against M. Zier & Co., so filed in the Floyd Circuit Court, averred an indebtedness of $15,000 of the said defendant, M. Zier & Co., to the plaintiff, Joseph T. Ryerson & Son, upon certain promissory notes stated in the complaint, and the said complaint prayed judgment in favor of said plaintiffs against said defendants in said sum of money.

The said complaint averred these further facts, that the defendant, M. Zier & Co., is a corporation duly created and organized under the laws of the state of Indiana, and authorized to and was carrying on, as such corporation, the business of manufacturing boilers in the city of New Albany, in the county of Floyd, and state of Indiana; that the said business was a large one; that the said defendant was indebted in the aggregate, to divers persons, in, at least, the sum of $65,000; that it was unable to meet its said obligations; that its creditors were threatening to enter suits against it; that the property and assets of said defendant corporation consisted of a manufacturing plant, which was in operation, and which was employed in filling unfinished orders, and working on unfinished contracts; that the defendant was without means or money with which to continue the operation of its said business, and that if suits should be instituted against it, and its property seized upon executions or attachments, the assets and property of the defendant would be dissipated and its plant rendered much less valuable to its creditors, generally, than if the said propery were properly preserved, and continued as a going concern; and that the property, funds and profits of the business of the said defendant were in danger of being lost and materially injured and destroyed, unless a receiver were immediately appointed to take charge of said property and hold the custody and possession thereof, and preserve the same for such disposition thereof as the court might adjudge.

The said Floyd Circuit Court, of the state of Indiana, and the judge thereof, in vacation, were and are by the statutes and laws of the state of Indiana, authorized and empowered to appoint receivers of and for insolvent corporations and their property and assets; that the said Floyd Circuit Court is a constitutional court, and the judge thereof a constitutional officer, made such by the Constitution of the state of Indiana, and the said Floyd Circuit Court is, by the Constitution and laws of the state of Indiana, a court of general, original jurisdiction, and had and has complete jurisdiction of said action.

On the same day on which said complaint was, as aforesaid, filed in the Floyd Circuit Court, and after it was filed and after the issuance and service of summons thereon, the plaintiffs in said action of Joseph T. Ryerson & Son, after due notice thereof to the defendant, M. Zier & Co., moved the Hon. William C. Utz, who was and is the duly elected, commissioned, qualified and acting judge of the said Floyd Circuit Court, and, as such judge, to appoint a receiver of the property and assets of the defendant, M. Zier & Co., in pursuance of the prayer of the said complaint. The said defendant, M. Zier & Co., appeared to said motion, and, after due consideration thereof, the said judge sustained said motion and appointed, by his order, duly made and entered, the New Albany Trust Company as receiver of the said defendant, M. Zier & Co., and of all of its assets and property. The said New Albany Trust Company is a corporation created and organized under the laws of the state of Indiana, with full corporate powers, among other things to act as receiver under the appointment of courts. That the said New Albany Trust Company, immediately upon its said appointment, duly qualified as such receiver, and then and there took upon itself the duties of said receivership, and took the oath as required by law and by said order of appointment. That imme-

diately after its said appointment and qualification as receiver aforesaid, and on the same day on which it was appointed as such receiver, and under the order of the said judge of the said Floyd Circuit Court, the said New Albany Trust Company, as such receiver, took into its possession all of the said property and assets of the said defendant, M. Zier & Co. That after its said appointment the said receiver made out an inventory of the property of the said M. Zier & Co., which it had taken possession of under its said appointment as such receiver on the 30th day of December, 1902, and caused the same to be appraised, which inventory and appraisement were filed in the said Floyd Circuit Court, in said action, and said inventory shows, and it is true, that the appraised value of said property was about $28,500. That on the 16th day of January, 1903, the said receiver filed in the Floyd Circuit Court its report and petition, wherein it sought the advice and instruction of said court, with respect to the continuance of the operation of said plant and prayed the court that a time be fixed for the hearing of said report and petition, and further prayed that said M. Zier & Co, and its officers, and the creditors of said M. Zier & Co., be notified by mail and by publication of the time and place of the hearing of said report and petition, and that the said creditors be requested to appear and make known their objections, if any, to the continuance of the operation of the plant of the said M. Zier & Co. Said petition further prayed that all creditors of M. Zier & Co. be required to prove their claims against said estate by filing proof thereof with the said receiver, or by intervening petition in said case, and that all creditors and persons be restrained and enjoined from prosecuting suits involving said assets in any manner except by intervening petition in said action.

And, thereupon, upon consideration of said petition,

the Floyd Circuit Court made a certain order, on the 16th day of January, 1903, directing said receiver to continue the operations of the said business of the said M. Zier & Co., and to carry out certain contracts for manufacturing boilers and appliances, which were stated in said order, and further directed that a hearing be had of the creditors of the said M. Zier & Co. on the 24th day of January, 1903.

On the 24th day of January, 1903, the time fixed for the hearing of the said creditors of the said defendant, it was made to appear to the said court, by the said receiver, that all of the creditors of the said M. Zier & Co., as shown by the books of the said M. Zier & Co., had been notified by the said receiver to be present on said 24th day of January, 1903, to be heard on said matters, and on said day a large majority, in number and amount, of the creditors of the said M. Zier & Co., appeared in said court, among whom was the Inland Steel Company, and were heard upon the said petition of said receiver, and thereby they became and were and are parties to said action; and after said hearing, and the court being sufficiently advised, the said court ordered and directed that the said receiver carry out and complete all unfinished contracts of the said defendant, M. Zier & Co., and the said court gave to said receiver power and authority to purchase new material for this purpose, but ordered said receiver not to make any new contracts, and gave to said receiver divers other orders and directions, and further ordered that all creditors and other persons be enjoined and restrained from prosecuting any claims or suits against said estate in the hands of said receiver, except by intervening in said cause, or by first obtaining leave of said court in said action, and under said order the said receiver of the said Floyd Circuit Court continued to operate the said plant, made divers and sundry contracts and agreements, and incurred divers and sundry debts and obligations.

The petitioner further states that on the 6th day of February, 1903, more than thirty days after the appointment of the receiver in said action in the said Floyd Circuit Court, and after such receiver had taken possession of the said property of M. Zier & Co., the Inland Steel Company, a creditor who had appeared and was a party to said action in said Floyd Circuit Court, and John C. Thruston and John Dey, doing business as the Dey Time Register Company, filed their certain petition in involuntary bankruptcy, in the District Court of the United States for the District of Indiana, against said M. Zier & Co., alleging certain acts of bankruptcy committed by M. Zier & Co., and praying that the said M. Zier & Co. be adjudged a bankrupt. The said petition in bankruptcy further alleged "that, under certain proceedings in a state court, a receiver has been appointed of the assets of said corporation, M. Zier & Co., and is attempting to collect assets of said estate and incurring petty expenses in and about said estate which must be borne by the creditors thereof, and your petitioners aver that it is absolutely necessary for the preservation of said estate of M. Zier & Co., for the benefit of all of its creditors that a receiver in bankruptcy be appointed herein forthwith."

On the 11th day of February, 1903, the said Inland Steel Company filed in said proceedings in bankruptcy its certain petition, in which it stated, among other things, "that at the instance of said Joseph T. Ryerson & Son, a receiver has been appointed by the Floyd Circuit Court of Floyd county, Indiana, to take charge of the assets of said alleged bankrupt; that the New Albany Trust Company is the receiver so appointed, and that Harry E. Jewett, who is the attorney for said M. Zier & Co., is also the vice-president of said New Albany Trust Company; that said receiver is now running the business of M. Zier & Co., and is completing certain contracts, and, for that purpose, has

employed a large number of men in the manufacturing establishment of said M. Zier & Co., and has placed in charge of said plant one Michael Zier, who is the vice-president and treasurer of said alleged bankrupt; that said Michael Zier is wholly incompetent for said business; that he is wholly unfamiliar with bookkeeping and necessary office work, which is essential to the safe conduct of said business, and your petitioner avers if said receiver is permitted to remain in charge that it would result to the injury and detriment of such of the general creditors of said M. Zier & Co., who are entitled to participate in said bankrupt estate.

"Your petitioner further states that W. W. & J. R. Watts, attorneys at Louisville, Ky., are the attorneys for said Joseph T. Ryerson & Son, in said proceedings wherein the said New Albany Trust Company was appointed receiver, and that said W. W. & J. R. Watts are also attorneys for said receiver, and your petitioner fears that said receiver is friendly to said Joseph T. Ryerson & Son, and said alleged bankrupt, to the detriment of the creditors at large of said alleged bankrupt. Your petitioner further alleges that it is absolutely necessary for the preservation of said estate for the benefit of all the creditors who shall be entitled to participate therein that a receiver in bankruptcy be appointed herein forthwith to take charge of all the assets of said alleged bankrupt, and administer the same under the directions of this honorable court, with the usual powers of receivers in such cases. Wherefore, your petitioner prays that a receiver in bankruptcy be appointed forthwith, and that such other and further orders be entered herein as to Your Honor shall seem meet and proper."

And upon the same day, to wit, on the 11th day of February, 1903, the said District Court of the United States, for the District of Indiana, in said bankrupt proceedings,

upon consideration of said petition filed by the Inland Steel Company, entered and made an order directing, among other things, as follows, to wit:

> "It is, therefore, considered and ordered by the court that Frederick D. Connor be, and he is hereby, appointed as receiver herein of the property of said M. Zier & Co., with authority to take charge and possession of all the same, and particularly the goods, wares and merchandise, books, papers and effects of or belonging to said M. Zier & Co., located at the city of New Albany, Floyd county, Indiana, and now in the hands of the New Albany Trust Company, as receiver of said M. Zier & Co., appointed by the Floyd Circuit Court of Floyd County, Indiana. Said receiver is ordered and directed to take into his possession the sheet iron and boiler manufacturing plant in said city of New Albany, together with all the tools, machinery, appliances, materials and finished products within and about said plant at said city of New Albany, which said plant is located at the corner of Pearl and Oak Streets, in said city, and all other property of said M. Zier & Co., wheresoever found and situated. It is further ordered and adjudged by the court that the New Albany Trust Company be and it is hereby required to deliver up to said Frederick D. Connor, as receiver, all the said property and effects of said M. Zier & Co., now in its possession, and to refrain hereafter from interfering in any way with the said receiver's possession and control of the same."

Said Frederick D. Connor duly accepted said appointment as the receiver of the District Court of the United States, for the District of Indiana, in said bankruptcy proceedings, and executed bond as such, as is required in the said order of appointment, and duly qualified thereunder.

4. On the 13th day of February, 1903, Frederic D. Connor, as receiver of the said United States District Court, in said bankruptcy proceedings, and acting under

the order appointing him as such receiver, as the petitioner was informed and believed, appeared at New Albany, Indiana, and demanded of the New Albany Trust Company that it deliver to him the assets and effects of M. Zier & Co., which it held and had in its possession, as receiver of said Floyd Circuit Court.

The petitioner, who was the attorney of the New Albany Trust Company, as receiver, as aforesaid, and the said receiver, believed that the said United States District Court, and the judge thereof, were not fully informed of the exact situation and condition of the proceedings in the said Floyd Circuit Court, and believed that the said order directing said Frederic D. Connor, receiver of said United States District Court, in said bankruptcy proceedings, to summarily and peremptorily take said property from the said receiver of said Floyd Circuit Court, was made under a misapprehension of the facts relating to said proceedings and action in the said Floyd Circuit Court, and so believing this petitioner, as its attorney, and the said New Albany Trust Company, conferred with respect to the demand of the said Frederic D. Connor, receiver of the said United States District Court, that the said property of the said M. Zier & Co., in the hands of said receiver of said Floyd Circuit Court, be turned over to him as receiver of the said United States District Court, and the result of said conference was that this petitioner telephoned to the judge of the United States District Court, for the District of Indiana, at Indianapolis, and requested him to direct the said Frederic D. Connor not to proceed further with his demand until this petitioner and the New Albany Trust Company could appear before him and explain to him the exact circumstances and condition of the action of Joseph T. Ryerson & Son against M. Zier & Co., pending in the said Floyd Circuit Court. And the said judge of the United States District Court stated, or caused it to

be stated over the telephone, that such explanations might be made on the folowing Monday, to wit, February 16th, 1903, and said judge of the United States District Court, did direct the receiver, Frederic D. Connor, for the time being, to suspend his demand for the possession of said property.

The petitioner, as its attorney, prepared for the New Albany Trust Company, receiver of the said Floyd Circuit Court, a petition for advice, in which it was stated that Frederic D. Connor had been appointed by the United States District Court in the said bankruptcy proceedings, receiver for the property and effects of M. Zier & Co., and that the order of appointment directed him to take the possession of said property from the said receiver of said Floyd Circuit Court, and stated that in the opinion of the receiver of the Floyd Circuit Court, namely, the New Albany Trust Company, said order had been made under some misapprehension, and stated also the fact that the petitioner had telephoned to the judge of the United States District Court at Indianapolis, and that said judge stated that he would hear the matter on Monday, the 16th day of February, 1903, and said New Albany Trust Company, as receiver, by said petition requested the judge of said Floyd Circuit Court to authorize it or its vice-president, Henry E. Jewett, and this petitioner, as its attorney, to specially appear in the United States District Court at Indianapolis and make a full and complete explanation of the exact condition of the record in the said action of Joseph T. Ryerson & Son against M. Zier & Co., pending in the said Floyd Circuit Court, and accordingly said petition as filed, on the 14th day of February, 1903, and, thereupon, on said day the said Floyd Circuit Court entered an order among other things authorizing Henry E. Jewett, vice-president of the New Albany Trust Company, Receiver, and this petitioner, as its attor-

ney, to appear before the United States District Court at Indianapolis, by a limited appearance, and by protestation against general appearance, which order in this respect is as follows:

> "And said receiver is now hereby ordered and directed, through its attorney, to proceed to Indianapolis, Indiana, and there, by a limited appearance, and by protestation against appearance, only, by petition upon such appearance only, lay before said District Court of the United States, for the District of Indiana, the facts with regard to the matters herein, said injunction, restraining order, and said estoppels, and to suggest to said court the orders of this court and the fact that had it been fully informed, as is believed by this court, its order with respect to the assets herein would at the most have been a direction to make an application to this court at the proper time and in the proper way for delivery of the said assets to such district court's receiver or trustee, after proper disposition and settlement of the matters herein."

All this was done solely for the purpose of preventing any possible conflict between the two jurisdictions, and it was believed by this petitioner and by the said New Albany Trust Company, and by the judge of the Floyd Circuit Court, that upon such presentation, the United States District Court would rescind its said order in so far as it directed said Frederic D. Connor, as receiver of said United States District Court, to summarily take possession of said property of M. Zier & Co., from said receiver of said Floyd Circuit Court. Under this authorization, and not otherwise, this petitioner and Henry E. Jewett, vice-president of the New Albany Trust Company, Receiver, of the said Floyd Circuit Court, did appear in the District Court of the United States, for the District of Indiana, at Indianapolis, on Monday, February 16, 1903,

and exhibited to the said court, the said order of the Floyd Circuit Court, authorizing them to appear, and made to the said court a full and complete statement of the condition of the said action of Joseph T. Ryerson & Son against M. Zier & Co., in the Floyd Circuit Court, and of all the proceedings had therein.

But so it is that after said explanation and statement had been made and argued by this petitioner before the judge of the said United States District Court, which argument and explanation consumed several hours, and continued over from Monday, February 16th until Tuesday, February 17th, the judge of the said United States District Court, refused in any way or to any extent to reconsider, modify or set aside his said order directing Frederic D. Connor, receiver of said United States District Court, to summarily take from the said receiver of the said Floyd Circuit Court, the said property, but, upon the contrary, peremptorily demanded of Henry E. Jewett, as the representative of the New Albany Trust Company, Receiver, to state whether or not he would turn over the property in the hands of the New Albany Trust Company, as receiver aforesaid, to Frederic D. Connor, receiver, and so demanded of this petitioner whether or not he, as counsel for the New Albany Trust Company, Receiver, would advise it to turn over said property to Frederic D. Connor, Receiver, the judge remarking at the time that he did not want to go to New Albany with a club, but would do so, if necessary, to obtain the property. Under these circumstances, and not otherwise, and believing that the said demand of said Judge of the said United States District Court was peremptory, the petitioner, as counsel for the said New Albany Trust Company, stated that he would advise the said New Albany Trust Company, Receiver, to turn over the said property to the said Frederic D. Connor, Receiver.

On the 17th day of February, 1903, the petitioner and the said Henry E. Jewett, left Indianapolis, and this petitioner was under the impression that it was not necessary to enter any order respecting the proceedings which were had in the United States District Court, on the 16th and 17th of February, 1903, with respect to the said explanation and arguments made by this petitioner, and was under the impression that no order would be entered in respect thereto. But this petitioner says that an order was entered, a fact which he learned several days afterward, which order is as follows:

"This cause coming on now to be heard upon the petition of Freelire D. Connor, filed herin on the 16th day of February, A. D., 1903, for the instructions of the court concerning the property and assets of said M. Zier & Co., which are now in the possession of the New Albany Trust Company, as receiver of the Floyd Circuit Court, in a suit therein pending against said M. Zier & Co., because of their insolvency; and the petitioning creditors in this cause and said Connor, receiver as aforesaid, being now present and represented by George H. Hester and William Wilhartz, their solicitors, and said New Albany Trust Company, receiver as aforesaid, being now present and represented by Henry E. Jewett, its vice-president, and by William W. Watts, its solicitor, and after argument by counsel, the said New Albany Trust Company, as receiver of the Floyd Circuit Court, by its said vice-president, having voluntarily offered and agreed by and with the consent and approval of said William W. Watts, its solicitor, in open court, to surrender full and immediate possession and control of the property and assets of said M. Zier & Co., in its possession or under its control, as receiver of the Floyd Circuit Court, to said Connor, as receiver of this court, upon the presentation by him to said New Albany Trust Company of a certified copy of the order of his appointment as such receiver heretofore made by this court.

"It is now hereby ordered by the court that said Connor, receiver as aforesaid, forthwith present a certified copy of the order of his appointment as such receiver to the said New Albany Trust Company, and immediately thereupon take full possession and control of the property and assets of said M. Zier & Co., that are now in possession or under control of said New Albany Trust Company, as receiver of the Floyd Circuit Court."

The said New Albany Trust Company, as receiver of the said Floyd Circuit Court, was and is in no way a party to said bankruptcy proceedings in said United States District Court, and had and has in no way appeared therein, except only upon the occasion, and under the circumstances, and by the authority hereinbefore stated.

On the 14th day of February, 1903, the said Frederic D. Connor, as said receiver of the United States District Court, by George H. Hester, as his attorney, appeared in the said Floyd Circuit Court in said action of Joseph T. Ryerson & Son against M. Zier & Co., and filed his verified petition therein, showing his appointment as such receiver by order of the United States District Court for the District of Indiana and praying said Floyd Circuit Court for an order requiring the said New Albany Trust Company, as receiver of said Zier & Co., to turn over and surrender to him, the said Frederic D. Connor, as receiver in bankruptcy, the property of the said M. Zier & Co., of which the said New Albany Trust Company, as receiver of M. Zier & Co., under the orders of the said Floyd Circuit Court was custodian, and thereupon said Frederic D. Conner, as such receiver was made a party to said suit and the matter of said petition was continued until the next term of said Floyd Circuit Court. Said 14th day of February was the last days of the then term of said Floyd Circuit Court. Copies of the said petition and

order made therein are filed herewith as ~~Barkley's~~ further marked "Exhibit C."

On the 19th day of February, 1903, this petitioner and the New Albany Trust Company, Receiver, appeared before the Judge of said Floyd Circuit Court at New Albany in Chambers, for the purpose of formally reporting to him the result of their appearance before the United States District Court at Indianapolis on the 16th and 17th days of February. This petitioner, as attorney for the New Albany Trust Company, then filed before the said Judge of said Floyd Circuit Court a written petition and motion which was signed by him as attorney as follows, to-wit:

"To the Honorable Judge of the Floyd Circuit Court in Chambers:

"Respectfully represents the New Albany Trust Company, Receiver herein, and W. W. Watts, one of its attorneys herein, that pursuant to the order of the court herein entered on Saturday, February 14, 1903, they on the 16th day of February, 1903, at Indianapolis, Ind., filed before the District Court of the United States for the District of Indiana, A. B. Anderson, Judge, presiding, a statement of the New Albany Trust Company, Receiver, under the order of this court setting forth the facts by protestation and limited appearance only and showing to said court the reasons for a modification of its order theretofore entered appointing a receiver granting an injunction and restraining order and directing its receiver to take possession of the assets of M. Zier & Co.

"This receiver and said attorney say they have made diligent effort to carry out the orders of this court with respect to those matter, but the order of said court remains as it was and they now move the court to strike and expunge from the files herein the petition of this receiver filed herein on the 14th day of February, 1903, and the order entered thereon."

Upon the aforesaid appearance made by this petitioner and said Henry E. Jewett, vice-president of the said New Albany Trust Company on the 16th and 17th days of February, 1903, before the United States District Court at Indianapolis, the Judge of said court seemed to feel that the petition for advice which the said New Albany Trust Company, Receiver, by this petitioner as its attorney, filed in the Floyd Circuit Court on the 14th day of February, 1903, was in some way offensive to him, the said Judge of the District Court of the United States, and for this reason this petitioner sought by said petition and statement filed before the Judge of said Floyd Circuit Court to have leave to strike out and expunge the said petition, and withdraw it from the files. This petitioner did advise and continue to advise, and at no time gave any contrary advice that the said New Albany Trust Company, as receiver of the Floyd Circuit Court, should turn over to Frederic D. Connor, receiver of the United States District Court in such bankruptcy proceedings, all of the property, assets and effects of M. Zier & Co., alleged bankrupts, and for this purpose said petition and statement was filed by this petitioner as attorney for the New Albany Trust Company, Receiver, and was signed by him as such attorney on the 19th day of February, 1903, before the Judge of the said Floyd Circuit Court. And this was done in good faith because he had stated to the Judge of the said United States District Court, that he would so advise. This petitioner was much embarrassed by the condition of affairs, and felt that the Judge of the said Floyd Circuit Court might disapprove his action in the premises, and before going to New Albany on the 19th of February, 1903, he sought Mr. David A. Sachs, who is a lawyer residing in Louisville, Ky., and who is a friend of this petitioner, and asked him to go to New Albany with him for the purpose of appearing for this petitioner

before the Judge of the Floyd Circuit Court and explaining the action of this petitioner in agreeing to advise the New Albany Trust Company, Receiver, to turn over the said property to Frederic D. Connor, Receiver. The said Sachs did go with this petitioner to New Albany and was present when the said petition and statement was filed before the Judge of the Circuit Court of Floyd County on that day, and the said Sachs did undertake to explain the situation and to satisfy the said Judge. After filing the said petition and on the same day, to-wit, on the 19th day of February, 1903, the said Judge of the said Floyd Circuit Court made and entered the following order upon said petition and statement, to-wit:

> "And the Judge after considering said statement refuses to concur therein, but orders that the matters and facts therein stated show that said W. W. Watts has been guilty of a contempt of court, and it is now ordered that a rule be issued against the said W. W. Watts to appear before the said Judge on the 21st day of February, 1903, at 3 o'clock p. m., and show cause, if any he has, why he should not be punished for contempt."

On the same day, towit, February 19th, 1903, the New Albany Trust Company, Receiver, by Henry E. Jewett, vice-president, filed before the Judge of said Floyd Circuit Court its other and separate petition, which is as follows:

> "The New Albany Trust Company, receiver in the above entitled cause, respectively shows to the court that in pursuance of the order heretofore made by this court it appeared by limited appearance and protestation only as ordered by this court before Judge A. B. Anderson, of Indianapolis, Judge of the United States District Court for the District of Indiana, on Monday, the 16th day of February, 1903, and that upon the hearing in that court this receiver stated to the Honor-

able Judge of said United States District Court that it was ready and willing to turn over to the receiver appointed by the Honorable Federal Court in bankruptcy proceedings of M. Zier & Co., then pending in said court the property and assets of said M. Zier & Co. in the hands of this receiver, and this receiver further states that it has not yet been able to make up its accounts as receiver as to the receipts and disbursements, but that it is now preparing the same to be submitted to this court. But that it is ready to turn over to Frederic D. Connor, the receiver appointed by the United States District Court in bankruptcy, all of the property of the said M. Zier & Company; and this receiver now prays for an order of this court authorizing it to turn over to said Frederic D. Connor, the property and assets of said M. Zier & Co., now in its hands, together with any balance in cash which may remain after such statement of its accounts shall be made up and presented and that upon delivering said property to said Frederic D. Connor, receiver aforesaid, it be discharged from all further liability for or on account of said property or assets of said M. Zier & Co. so turned over to said Connor as such receiver.

"This receiver further asks that upon making up and presentation of its accounts for allowances to this court, that it be allowed to resign as receiver of the said M. Zier & Co., and that upon the approval of its accounts its said resignation be accepted by this court, and that it be fully and finally discharged as such receiver.

"All of which is respectfully submitted.

"The New Albany Trust Company.

"By Henry E. Jewett,
Vice-President."

And afterwards, to-wit, on the same day the Judge of said Floyd Circuit Court, upon consideration of said petition and statement, made the following order:

"And the Judge after reading said tender of resignation holds that the matters therein set forth show

that said receiver is in contempt of court, and the Judge orders that a rule issue at once against said receiver to appear before the undersigned Judge on the 21st day of February, 1903, at 3 o'clock p. m. and show cause, if any it has, or can, why it should not be punished for contempt of court."

And on the same day, to-wit, the 19th day of February, 1903, after the said New Albany Trust Company had filed its petition and statement and asked leave to resign before the Judge of the said Floyd Circuit Court, the said New Albany Trust Company addressed to Frederic D. Connor, receiver for the United States District Court, for the District of Indiana, the following letter, to-wit:

"Fred D. Connor,
Receiver, U. S. District Court,
District of Indiana.

"In view of your demand that as receiver of the Floyd Circuit Court we deliver you the property of M. Zier and Company, as such receiver will state:

"We, this morning, filed before the Judge of the Floyd Circuit Court, in Chambers, report, a copy of which is attached hereto. Thereupon the Judge stated orally that he wanted us to hold the property until our accounts as receiver were rendered and passed upon. We think this might be done to-morrow, and if you are willing to defer action until then, it will relieve us of embarrassment in the premises.

"On the other hand, if you insist on immediate surrender of the property to you, we are bound to say that we believe that to carry out in good faith the understanding with the Honorable Judge of the United States District Court of Indianapolis and our vice-president, H. E. Jewett, we ought to surrender the property to you at once.

Very truly yours,
The New Albany Trust Company,
By H. E. Jewett,
Vice-Pres't."

"February 19th, 1903."

On the same day and after receipt by said Frederic D. Connor of said communication, he expressed to the New Albany Trust Company, Receiver, his unwillingness to delay the delivery of said property to him, and thereupon on said day the said property was delivered to him by the said New Albany Trust Company, Receiver, without any authorization or direction of the Floyd Circuit Court or the Judge thereof.

On the following day, namely, February 20th, 1903, this petitioner appeared before the Judge of the said Floyd Circuit Court, because the said Judge had by telephone on the evening before requested his presence, and in pursuance of this request and in obedience thereto, this petitioner appeared. On that day an order was entered removing the New Albany Trust Company as receiver of the Floyd Circuit Court in said action, and appointing Charles D. Kelso as receiver in its stead, and directing the said Kelso as receiver to demand of the said New Albany Trust Company and of Frederic D. Connor the immediate possession of the property of M. Zier & Co., which came into the hands of said New Albany Trust Company, as receiver in the action, and requiring the said Kelso, receiver, if the said New Albany Trust Company, or said Frederic D. Connor, should fail or refuse to immediately turn over or surrender possession of said assets and property to said Kelso, receiver, to report that fact to the Judge of the court. Before entering this order, the New Albany Trust Company had actually, under the advice of this petitioner (said Watts) turned over said property to Frederic D. Connor, receiver of the United States District Court, for the District of Indiana, in said bankruptcy proceedings, as above stated. This petitioner did not advise, aid, connive at or abet the making or the entry of said order of the Judge of said Floyd Circuit Court removing the New Albany Trust Company, receiver, and appointing

Charles D. Kelso as receiver, and had nothing whatsoever to do with it.

On the 20th day of February, 1903, after the entry of said order, appointing him receiver in the stead of the New Albany Trust Company, Charles D. Kelso filed a written report before the Judge of said Floyd Circuit Court in which it was stated that he demanded of the New Albany Trust Company possession of all the property and assets of said M. Zier & Co. which came into its hands as receiver of said M. Zier & Co., and that said New Albany Trust Company failed and refused to surrender the possession thereof for the reason as stated by it that it had turned over the plant of M. Zier & Co., located on Pearl and Oak streets in the city of New Albany to Frederic D. Connor, and that as to the other assets of said M. Zier & Co. in its hands it intended to account forthwith to the Honorable Judge of the Floyd Circuit Court.

And afterwards on the same day upon consideration of said report, the Judge of the said Floyd Circuit Court entered an order directing the issuance of a summary writ directed to the sheriff of Floyd county, requiring the said sheriff to immediately seize and take into his possession and deliver over to said Charles D. Kelso, receiver of M. Zier & Co., all the property of said M. Zier & Co., which said Frederic D. Connor had in his possession, which property was described in said order. This petitioner did not procure the entry of said order or connive at its entry or advise its entry, and did not know of its entry until after it had been entered. He had no connection whatever with it.

As this petitioner is informed, upon said last named order a writ was issued by the clerk of said Floyd Circuit Court and placed in the hands of the sheriff of said Floyd county, and that the same was executed and the property taken from the possession of Frederic D. Connor, and

given into the possession of Charles D. Kelso, receiver of the said Floyd Circuit Court. But this petitioner did not advise said writ to be issued or connive at its issuance, and did not know of its issuance until after it had been issued and served. He had no connection whatever with it.

This petitioner further states that after his appearance before the United States District Court at Indianapolis on the 16th and 17th days of February, 1903, all of his acts and doings and advice were with the single purpose of having the New Albany Trust Company, Receiver, at once turn over all of the property and effects of M. Zier & Co. to Frederic D. Connor, receiver of the said United States District Court in said bankruptcy proceedings; and he did nothing and said nothing and advised nothing which would in any way or to any extent obstruct or delay the execution of that purpose. He did nothing and said nothing and advised nothing with reference to the removal of the New Albany Trust Company as receiver and the appointment of Charles D. Kelso as receiver. He in no way, nor to any extent, directly or remotely or contingently, did anything or advised anything looking to the retaking of said property from the hands of said Frederic D. Connor, Receiver, and with reference to all of these things he had nothing whatsoever to do.

4. After said property which was in its hands as receiver was delivered by the New Albany Trust Company, receiver of the said Floyd Circuit Court, to Frederic D. Connor, receiver of the said United States District Court in the manner and under the circumstances hereinbefore stated, and after the removal by the Judge of the said Floyd Circuit Court of said New Albany Trust Company as receiver, and the appointment of Charles D. Kelso as receiver in its stead, and after the said property was, under the aforesaid writ, taken by the sheriff of Floyd county, Indiana, from the possession of Frederic D. Connor and

placed in the possession of Charles D. Kelso, receiver of the said Floyd Circuit Court, to-wit, on the 21st day of February, 1903, the said Frederic D. Connor, Receiver, filed his certain petition and affidavit in said bankruptcy proceedings in said United States District Court, stating and showing, among other things, said facts, and upon consideration of said petition and affidavit, the said United States District Court on said 21st day of February, 1903, in said bankruptcy proceedings, made and entered an order, ordering among other things, as follows:

> "It is further ordered by the court that Charles D. Kelso as receiver of M. Zier and Company under the appointment of the Floyd Circuit Court, and individually, Raymond J. Morris, sheriff of Floyd county, Indiana, and individually, Claude Citizen, deputy sheriff of Floyd county, Indiana, and individually, Thomas Smithwick, custodian of the property of said M. Zier and Company under an alleged appointment of Charles D. Kelso as receiver of the Floyd Circuit Court, William W. Watts and D. A. Sachs as attorneys for Charles D. Kelso as such receiver, and individually, and each of them, are hereby required to appear before this court at Indianapolis in this Distrist on Wednesday, the twenty-fifth day of February, 1903, at nine o'clock a. m. of said day, and then and there show cause why they should not be punished for contempt for the violation of the orders of said court heretofore made herein.
>
> "It is further ordered by the court that the marshal of this district shall serve each of the parties named in the foregoing order by the delivery of a copy thereof to them and each of them. . . .
>
> "It is ordered by the court, that, so far as the proceedings upon the petition of the receiver filed on the 21st day of February, 1903, are instituted against the parties named therein for a contempt of this court, they shall be docketed in this court at Indianapolis and henceforth conducted under the title of the United States against the parties aforesaid."

The petitioner further states that afterwards, on the same day, to-wit, on the 21st day of February, 1903, the United States District Attorney for the District of Indiana, filed an information in the District Court of the United States for said District, which is as follows:

"United States of America, District of Indiana, ss.:

In the District Court of the United States, for the District of Indiana.

November Term A. D. 1902, at Indianapolis.

"Now comes Joseph B. Kealing, Attorney of the United States in and for the District of Indiana, who prosecutes for the said United States in this behalf in his own proper person and in the name and on behalf of the United States, alleges, informs and declares as follows, to wit:

"That in a certain proceeding in bankruptcy in the said District of Indiana, to-wit:

"In the matter of M. Zier & Co., Bankrupts, Case No. 37, in the said court pending at New Albany, Indiana, certain orders and decrees had been made by the said United States District Court, the Hon. Albert B. Anderson, presiding Judge, whereby Frederick D. Connor was appointed receiver to take charge of the property, goods, wares and merchandise of the said M. Zier & Co., bankrupts aforesaid. That he had qualified as such receiver and had lawfully taken possession of the said property aforesaid, then and there situated at New Albany, under and by virtue of the said order made by the court aforesaid. All of which more fully appears in the affidavit herewith and upon which this Information is based.

"That on the 20th day of February, A. D. 1903, that Raymond J. Morris, Claude Sittison, Thomas Smithwick, Charles D. Kelso, William W. Watts and D. A. Sachs, whose given name is unknown to the affiant who made said affidavit, and to the Attorney for the United States herein did then and there wrongfully, unlawfully, knowingly and forcibly take from

the said Frederick D. Connor, receiver as aforesaid the property, goods and chattels of M. Zier & Co., Bankrupts, and then and there withhold wrongfully, knowingly and unlawfully the possession and custody of said property from the said Frederick D. Connor, receiver as aforesaid, well knowing at the time that he was the lawfully appointed receiver of the said United States District Court, aforesaid, and then and there knowingly, wrongfully, unlawfully and willfully disregard and disobey the orders and decrees of the said court, all of which more fully appears in the accompanying affidavit which is made a part hereof, whereby they are each guilty of contempt of this court, contrary to the form of the statutes and against the peace and dignity of the United States.

Joseph B. Kealing,
United States Attorney."

The sajd affidavit referred to in said Information is the same affidavit made by Frederic D. Connor, and filed in said bankruptcy proceedings as aforesaid, and the same upon which said rule in said bankruptcy proceedings was awarded.

The said rule and information as to this petitioner and D. A. Sachs were set for hearing on the 9th day of March, 1903, and on that day the petitioner appeared in said United States District Court at Indianapolis to respond to said rule and information. Upon the calling thereof the petitioner inquired of the court whether he was required to respond to said rule or plead to said Information, and the court ruled and adjudged that the petitioner should respond to said rule and plead to said Information conjointly. Whereupon the petitioner filed his response and pleas to said rule and Information, separate from the response and pleas of D. A. Sachs. The said response denied the jurisdiction and power of the said United States District Court to make the orders directing its said receiver summarily to take from said receiver of the said

Floyd Circuit Court the said property in the hands of the latter, and asserted that the possession of the property which the said receiver of the said United States District Court acquired from the New Albany Trust Company, then acting as receiver of said Floyd Circuit Court, without the consent and against the orders of said court, was an unlawful possession, and that the said retaking of said property under the orders of the Floyd Circuit Court was a lawful taking, but nevertheless, that the petitioner had nothing whatever to do with the retaking of said property; and the said response further set out all the facts substantially as they are stated in this petition.

Upon the filing of said response and pleas the District Attorney offered to introduce the testimony of witnesses to dispute in evidence the matter of said response and pleas, to which the petitioner then objected, on the ground that for the purposes of the proceedings for contempt the said response and pleas should be taken as true, but the court overruled the objection, to which the defendant excepted.

Thereupon the trial proceeded, and the District Attorney for the United States introduced oral and documentary evidence, and the petitioner did the like. The trial consumed several days and at the conclusion of all the evidence and after argument of counsel the court delivered an opinion and made and entered the said order and judgment hereinbefore set out, adjudging the petitioner guilty of contempt, and ordering that he be confined in the jail of Marion county, Indiana, for the period of sixty days. The petitioner was at once committed to custody, and under said order and judgment he is now wrongfully and unlawfully confined in said jail.

The petitioner files herewith as parts of this, his petition, a complete transcript of the record in the case of Joseph T. Ryerson & Son v. M. Zier & Co. pending in the

Floyd County Indiana Circuit Court, marked "Exhibit A"; and a complete transcript of the record in the said bankruptcy proceedings in the United States District Court for the District of Indiana, including the proceedings upon said rule and Information, marked "Exhibit B."

Wherefore, the petitioner prays that Your Honors grant and issue a writ of habeas corpus directed to Robert Metzger, sheriff of Marion county in the State of Indiana, and *ex officio* jailer of said county, and Henry C. Pettit, marshal of the United States for the District of Indiana, either or both as Your Honors may deem proper in the premises, commanding them to produce before Your Honors upon a day to be named in the writ the body of your petitioner, to the end that Your Honors may inquire into the cause of restraint of the petitioner's liberty.

And your petitioner further prays that Your Honors grant and issue a writ of certiorari agreeably to the rules and practice of this Honorable Court, and further that Your Honors order and direct, by such order as may be appropriate in the premises, that the petitioner be admitted to bail conditioned for his appearance before this Honorable Court on the return day of the writ of habeas corpus, and your petitioner prays for such other or further orders as to Your Honors may seem meet.

WILLIAM W. WATTS.

State of Indiana, Marion County, ss:

William W. Watts, being duly sworn, upon his oath says that the averments of the foregoing petition are true as he verily believes.

WILLIAM W. WATTS.

Subscribed and sworn to before me, the undersigned, this 17th day of March, 1903.

(Seal.) LOU A. ROBERTSON,
Notary Public, Marion County, Indiana.

My commission expires November 26, 1904.

State of Indiana, Marion County, Set:

I, William E. Davis, Clerk of the County of Marion, in the State of Indiana, and also Clerk of the Circuit Court within and for said county and State, the same being a Court of Record, and having a seal, do hereby certify that Lou A. Robertson was on March 17, 1903, an acting Notary Public, within and for the county aforesaid, duly commissioned and qualified, and authorized by the laws of the State of Indiana, to take and certify all affidavits and the acknowledgments and proof of deeds or conveyances, and all other instruments of writing, and that the commission of the said Lou A. Robertson, commenced on November 26, 1900, and expires on November 26, 1904.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court and county, at Indianapolis, Indiana, this 17th day of March, 1903.

(Seal.) WM. E. DAVIS, Clerk.

FILE COPY.

Office Supreme Court U.S.
FILED
MAR 23 1903
JAMES H. McKENNEY
Clerk

16 Orig.

Petition of David A. Sacks

for Writ of Habeas Corpus and

Writ of Certiorari.

FILE COPY.

Supreme Court of the United States.

To the Honorable the Justices of the Supreme Court of the United States.

The petition of David A. Sachs for a writ of habeas corpus and for a writ of certiorari.

1. The petitioner, David A. Sachs, respectfully states that he is a citizen of the State of Kentucky and a resident of the City of Louisville in said state, and that he is now and at all times hereinafter stated was, and for many years has been a practicing attorney at law.

The petitioner further states that he is wrongfully and unlawfully detained in custody by Robert Metzger, the Sheriff of Marion County in the State of Indiana, who is the ex officio jailer of said county, and Henry C. Pettit, the Marshal of the United States for the District of Indiana, and that he is now wrongfully and unlawfully, by the said persons, detained and imprisoned in the jail of said county. The said persons, namely, the said jailer and the said marshal arrested and placed the petitioner in custody, and so continue to hold him in custody in said jail under and by virtue of the authority of a certain order and judgment of the District Court of the United States for the District of Indiana, made and entered by said court on the 14th day of March, A. D. 1903, which said order and judgment is as follows, to-wit:

"United States,

vs. } No. 6377.

William W. Watts and D. A. Sachs.

"And afterwards, to-wit, at the November term of said court on the 14th day of March, 1903, before

Honorable Albert B. Anderson, Judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

"Come now Joseph B. Keeling, Esquire, United States attorney and the defendants, William W. Watts and D. A. Sachs, in person, and by their respective attorneys also come, and thereupon the court having considered the evidence and argument of counsel, and being sufficiently advised in the premises, doth find that said defendants are guilty of the contempt charged. It is therefore considered by the court that said defendant, William W. Watts for the offense charged be imprisoned and confined in the jail of Marion County, Indiana, for the term of sixty days, and that he do pay unto the United States the costs of this proceeding, taxed at dollars, and that he do stand committed until said costs are paid; and it is further considered by the court that said defendant, D. A. Sachs, for the offense charged, be imprisoned and confined in the jail of Marion County, Indiana, for the term of sixty days, and that he do pay unto the United States the costs of this proceeding, taxed at dollars, and that he do stand committed until said costs are paid."

Upon said order and judgment a certain writ or mittimus was issued by the clerk of the said United States District Court for the District of Indiana, which, together with the endorsement thereon, is as follows:

"United States of America, District of Indiana, ss:

"President of the United States. To the marshal of said district, Greeting:

"Whereas, by the judgment of the District Court of the United States, in and for said district, at the November term thereof, on the 14th day of March, A. D. 1903, David A. Sachs, who, before in said court had been convicted of record of the crime of contempt of court, was sentenced therefor to be im-

prisoned in the Marion county jail in said district for the term of sixty (60) days, and to pay unto the United States the costs of this prosecution, taxed at ———— dollars:

"You are therefore hereby commanded to deliver the body of the said David A. Sachs into the custody of the jailer of said prison to undergo the execution of said sentence.

Witness, the Honorable Albert B. Anderson, Judge of the District Court of the United States for the District of Indiana and the seal of said District Court, this 14th day of March, A. D. 1903.

"Noble C. Butler.

Endorsement:

"Case No. 6377. District Court of the United States, District of Indiana. United States v. David A. Sachs. Warrant to Marshal to deliver convict to Marion county jail. Keeling, United States Attorney."

The said order and judgment of the said United States Court for the District of Indiana was and is wrongful and void, and the said court had no jurisdiction to make or enter it, and the making and entering thereof was and is beyond the power of the said court, and the said writ or mittimus was and is void.

2. Your petitioner further states that on the 30th day of December, 1902, Joseph T. Ryerson & Son filed their certain complaint in the Floyd Circuit Court of the State of Indiana against M. Zier & Co., defendant, and on the same day caused to be issued by the clerk of said Floyd Circuit Court, and there was duly issued by the said clerk a summons upon the said complaint against M. Zier & Co., which said summons on the same day of its issuance came duly to the hands of the Sheriff of Floyd county, Indiana, and was by him on the same day duly served on the defendant, M. Zier & Co. This said

complaint of Joseph Ryerson & Son against M. Zier & Co., so filed in the Floyd Circuit Court, averred an indebtedness of $15,000 of the said defendant, M. Zier & Co., to the plaintiff, Joseph T. Ryerson & Son, upon certain promissory notes stated in the complaint, and the said complaint prayed judgment in favor of said plaintiffs against said defendants in said sum of money.

The said complaint averred these further facts, that the defendant, M. Zier & Co., is a corporation duly created and organized under the laws of the State of Indiana, and authorized to and was carrying on as such corporation the business of manufacturing boilers in the city of New Albany, in the county of Floyd and State of Indiana; that the said business was a large one; that the said defendant was indebted in the aggregate to divers persons in at least the sum of $65,000; that it was unable to meet its said obligations; that its creditors were threatening to enter suits against it; that the property and assets of said defendant corporation consisted of a manufacturing plant, which was in operation, and which was employed in filling unfinished orders, and working on unfinished contracts; that the defendant was without means or money with which to continue the operation of its said business, and that if suits should be instituted against it, and its property seized upon executions or attachments, the assets and property of the defendant would be dissipated and its plant rendered much less valuable to its creditors generally than if the said property were properly preserved and continued as a going concern; and that the property, funds and profits of the business of the said defendant were in danger of being lost and materially injured and destroyed unless a receiver were immediately appointed to take charge of said property and hold the custody and possession thereof, and preserve the same for such disposition thereof as the court might adjudge.

The said Floyd Circuit Court, of the State of Indiana, and the judge thereof in vacation were and are by the statutes and laws of the State of Indiana authorized and empowered to appoint receivers of and for insolvent corporations and their property, assets; that the said Floyd Circuit Court is a constitutional court, and the judge thereof a constitutional officer, made such by the constitution of the State of Indiana, and the said Floyd Circuit Court is by the constitution and laws of the State of Indiana a court of general, original jurisdiction.

On the same day on which said complaint was as aforesaid filed in the Floyd Circuit Court, and after it was filed and after the issuance and service of summons thereon, the plaintiffs in said action of Joseph T. Ryerson & Son, after due notice thereof to the defendant, M. Zier & Co., moved the Hon. William C. Utz, who was and is the duly elected, commissioned, qualified and acting judge of the said Floyd Circuit Court, and as such judge to appoint a receiver of the property and assets of the defendant, M. Zier & Co., in pursuance of the prayer of the said complaint. The said defendant, M. Zier & Co., appeared to said motion and, after due consideration thereof, the said judge sustained said motion and appointed by his order, duly made and entered, the New Albany Trust Company as receiver of the said defendant, M. Zier & Co., and of all of its assets and property. The said New Albany Trust Company is a corporation created and organized under the laws of the State of Indiana with full corporate powers, among other things to act as receiver under the appointment of courts. That the said New Albany Trust Company immediately upon its said appointment duly qualified as such receiver, and then and there took upon itself the duties of said receivership. That immediately after its said appointment and qualification as receiver aforesaid, and on the same day on which it was appointed as

such receiver, and under the order of the said judge of the said Floyd Circuit Court, the said New Albany Trust Company, as such receiver, took into its possession all of the said property and assets of the said defendant, M. Zier & Co. That after its said appointment, the said receiver made out an inventory of the property of the said M. Zier & Co., which it had taken possession of under its said appointment as such receiver on the 30th day of December, 1902, and caused the same to be appraised, which inventory and appraisement were filed in the said Floyd Circuit Court in said action, and said inventory shows that the appraised value of said property was about $28,500. That on the 16th day of January, 1903, the said receiver filed in the Floyd Circuit Court its report and petition, wherein it sought the advice and instruction of said court with respect to the continuance of the operation of said plant, and prayed the court that a time be fixed for the hearing of said report and petition, and further prayed that said M. Zier & Co., and its officers and the creditors of said M. Zier & Co., be notified by mail and by publication of the time and place of the hearing of said report and petition, and that the said creditors be requested to appear and make known their objections, if any, to the continuation of the operation of the plant of the said M. Zier & Co. Said petition further prayed that all creditors of M. Zier & Co. be required to prove their claims against said estate by filing proof thereof with the said receiver, or by intervening petition in said case, and that all creditors and persons be restrained and enjoined from prosecuting suits involving said assets in any manner except by intervening petition in said action.

And thereupon, upon consideration of said petition, the Floyd Circuit Court made a certain order on the 16th day of January, 1903, directing said receiver to continue the operations of the said business of the said M. Zier

& Co., and to carry out certain contracts for manufacturing boilers and appliances, which were stated in the said order, and further directed that a hearing be had of the creditors of the said M. Zier & Co. on the 24th day of January, 1903.

On the 24th day of January, 1903, the time fixed for the hearing of the said creditors of the said defendant, it was made to appear to the said court by the said receiver that all of the creditors of the said M. Zier & Co., as shown by the books of the said M. Zier & Co., had been notified by the said receiver to be present on the said 24th of January, 1903, to be heard on said matters, and on said day a large majority in number and amounts of the creditors of the said M. Zier & Co. appeared in said court, among whom was the Inland Steel Company, and were heard upon the said petition of said receiver, and thereby they became and were and are parties to said action; and after said hearing and the court being sufficiently advised, the said court ordered and directed that the said receiver carry out and complete all unfinished contracts of the said defendant, M. Zier & Co., and the said court gave to said receiver power and authority to purchase new material for this purpose, but ordered said receiver not to make any new contracts, and gave to said receiver divers other orders and directions, and further ordered that all creditors and other persons be enjoined and restrained from prosecuting any claims or suits against said estate in the hands of said receiver except by intervening in said cause, or by first obtaining leave of said court in said action, and under said order the said receiver of the said Floyd Circuit Court continued to operate the said plant, made divers and sundry contracts and agreements, and incurred divers and sundry debts and obligations.

The petitioner further states that on the 6th day of February, 1903, more than thirty days after the appoint-

ment of the receiver in said action in the said Floyd Circuit Court and after said receiver had taken possession of the said property of M. Zier & Co., the Inland Steel Company, a creditor who had appeared and was a party to said action in said Floyd Circuit Court, and John C. Thruston and John Dey, doing business as the Dey Time Register Company, filed their certain petition in involuntary bankruptcy in the District Court of the United States for the District of Indiana against M. Zier & Co., alleging certain acts of bankruptcy committed by M. Zier & Co. and praying that the said M. Zier & Co. be adjudged bankrupt. The said petition in bankruptcy further alleged 'that, under certain proceedings in a State Court, a receiver has been appointed of the assets of said corporation, M. Zier & Co., and is attempting to collect assets of said estate and incurring petty expenses in and about said estate, which must be borne by the creditors thereof, and your petitioners aver that it is absolutely necessary for the preservation of said estate of M. Zier & Co., for the benefit of all of its creditors that a receiver in bankruptcy be appointed herein forthwith."

On the 11th day of February, 1903, the said Inland Steel Company filed in said proceedings in bankruptcy its certain petition in which it stated among other things, "That at the instance of said Joseph T. Ryerson & Son, a receiver has been appointed by the Floyd Circuit Court of Floyd County, Indiana, to take charge of the assets of said alleged bankrupt; that the New Albany Trust Company is the receiver so appointed, and that Harry E. Jewett, who is the attorney for the said M. Zier & Co., is also the viec-president of said New Albany Trust Company; that said receiver is now running the business of M. Zier & Co., and is completing certain contracts and for that purpose has employed a large number of men in the manufacturing establish-

ment of said M. Zier & Co., and has placed in charge of said plant one Michael Zier, who is vice-president and treasurer of said alleged bankrupt; that said Michael Zier is wholly incompetent for said business; that he is wholly unfamiliar with bookkeeping and necessary office work which is essential to the safe conduct of said business, and your petitioner avers if said receiver is permitted to remain in charge that it would result to the injury and detriment of such of the general creditors of said M. Zier & Co., who are entitled to participate in said bankrupt estate.

"Your petitioner further states that W. W. and J. R. Watts, attorneys at Louisville, Ky., are the attorneys for said Joseph T. Ryerson & Son, in said proceedings wherein the said New Albany Trust Company was appointed receiver, and that said W. W. & J. R. Watts are also attorneys for said receiver, and your petitioner fears that said receiver is friendly to said Joseph T. Ryerson & Son and said alleged bankrupt to the detriment of the creditors at large of said alleged bankrupt. Your petitioner further alleges that it is absolutely necessary for the preservation of said estate for the benefit of all the creditors who shall be entitled to participate therein that a receiver in bankruptcy be appointed herein forthwith to take charge of all the assets of said alleged bankrupt and administer the same under the directions of this Honorable Court with the usual powers of receivers in such cases. Wherefore your petitioner prays that a receiver in bankruptcy be appointed forthwith and that such other and further orders be entered herein as to your honor shall seem meet and proper."

And upon the same day, to wit, on the 11th day of February, 1903, the said District Court of the United States for the District of Indiana, in said bankrupt proceedings, upon consideration of said petition filed by the Inland Steel Company, entered and made an order di-

recting among other things as follows, to wit: "It is therefore considered and ordered by the court that Frederick D. Connor be and he is hereby appointed as receiver herein of the property of said M. Zier & Co., with authority to take charge and possession of all the same and particularly the goods, wares and merchandise, books, papers and effects of, or belonging, to said M. Zier & Co., located at the City of New Albany, Floyd County, Indiana, and now in the hands of the New Albany Trust Company, as receiver of said M. Zier & Co., appointed by the Floyd Circuit Court of Floyd County, Indiana. Said receiver is ordered and directed to take into his possession the sheet iron and boiler manufacturing plant in said City of New Albany, together with all the tools, machinery, appliances, materials and finished products within and about said plant at said City of New Albany, which said plant is located at the corner of Pearl and Oak streets in said city, and all other property of said M. Zier & Co. wheresoever found and situated. It is further ordered and adjudged by the court that the New Albany Trust Company be and it is hereby required to deliver up to said Frederic D. Connor, as receiver, all the said property and effects of said M. Zier & Co., now in its possession, and to refrain hereafter from interfering in any way with the said receiver's possession and control of the same."

Said Frederick D. Connor duly accepted said appointment as the receiver of the District Court of the United States for the District of Indiana in said bankruptcy proceedings, and executed bond as such, as is required in the said order of appointment, and duly qualified thereunder.

4. On the 13th day of February, 1903, Frederic D. Connor, as Receiver of the said United States District Court in said bankruptcy proceedings, and acting under the order appointing him as such Receiver, as the petitioner was informed and believed, appeared at New Albany, In-

diana, and demanded of the New Albany Trust Company, that it deliver to him the assets and effects of M. Zier & Co. which it held and had in its possession as Receiver of said Floyd Circuit Court.

Your petitioner states that said W. W. Watts was the attorney of the New Albany Trust Company, as Receiver as aforesaid, and he is informed that the said Receiver believed that the said United States District Court and the Judge thereof were not fully informed of the exact situation and condition of the proceedings in the said Floyd Circuit Court, and believing that the said order directing said Frederic D. Connor Receiver of said United States District Court in said bankruptcy proceedings, to summarily and peremptorily take said property from the said Receiver of said Floyd Circuit Court, was made under a misaprehension of facts relating to said proceedings and actions in said Floyd Circuit Court, and so believing, he is informed that said W. W. Watts, as it attorney, and the said New Albany Trust Company, conferred with respect to the demand of Frederic D. Connor, Receiver of the United States District Court, that the said property of the said M. Zier & Co. in the hands of the Receiver of the Floyd Circuit Court be turned over to him as Receiver of the United States District Court, and the result of said conference as he is informed, was that said W. W. Watts telephoned to the Judge of the United States District Court for the District of Indiana at Indianapolis, and requested him to direct the said Frederic D. Conner not to proceed further with his demand until the said W. W. Watts and the New Albany Trust Company could appear before him and explain to him the exact circumstances and condition of the action of Joseph T. Ryerson & Son against M. Zier & Co., pending in said Floyd Circuit Court,and the said Judge of the United States District Court stated, or caused to be stated over the telephone, that such explana-

tion might be made on the following Monday, to-wit, February 16, 1903, and said Judge of the United States District Court did direct the Receiver, Frederic D. Connor, for the time being to suspend his demand for the possession of said property.

That said W. W. Watts, as attorney for said New Albany Trust Company, Receiver of said Circuit Court, prepared a petition for advice, in which it was stated that Frederic D. Connor had been appointed by the United States District Court in said bankruptcy proceedings, Receiver for the property and effects of M. Zier & Co., and that the order of appointment directed him to take possession of said property from the said Receiver of said Floyd Circuit Court, and stated that in the opinion of the Receiver of the Floyd Circuit Court, namely, the New Albany Trust Company, said order had been made under some misapprehension, and stated also the fact that said Watts had telephoned to the Judge of the United States District Court at Indianapolis, and that said Judge stated that he would hear the matter on Monday, the 16th of February, 1903, and said New Albany Trust Company, as Receiver, by said petition requested the said Floyd Circuit Court to authorize it or its Vice President, Henry E. Jewett, and said Watts, as its attorney, to specially appear in the United States District Court at Indianapolis and make a full and complete explanation of the exact condition of the record in said action of Joseph T. Ryerson & Son against M. Zier & Co., pending in the said Floyd Circuit Court, and accordingly said petition was filed on the 14th day of February, 1903, and thereupon on said day the said Floyd Circuit Court entered an order among other things authorizing Henry E. Jewett, vice-president of the New Albany Trust Company, Receiver, and W. W. Watts, as its attorney, to appear before the United States District Court at Indianapolis by a limited appearance and by pro-

testation against general appearance, which order, in this respect, is as follows:

> "And said Receiver is now hereby ordered and directed through its attorney, to proceed to Indianapolis, Indiana, and there by a limited appearance and by protestation against appearance only, by petition upon such appearance only, lay before said District Court of the United States for the District of Indiana the facts with regard to the matters herein, said injunction, restraining order, and said estoppels, and to suggest to said court the orders of this court and the fact that had it been fully informed, as is believed by this court, its order with respect to the assets herein would at the most have been a direction to make an application to this court at the proper time and in the proper way for the delivery of the said assets to such District Court's receiver, or trustee, after proper disposition and settlement of the matters herein."

Your petitioner states that he is informed and believes, and so charges, that all of this was done solely for the purpose of preventing any possible conflicts between the two jurisdictions, and that it was believed by said Watts and the New Albany Trust Company, and by the Judge of the Floyd Circuit Court, that upon said presentation the United States District Court would rescind its said order in so far as it directed the said Frederic D. Connor as receiver of said United States District Court to summarily take possession of said property of M. Zier & Co. from said receiver of the said Floyd Circuit Court, and that under this authorization, and not otherwise, the said W. W. Watts and Henry E. Jewett, vice-president of the New Albany Trust Company, Receiver of said Floyd Circuit Court, did appear in the District Court of the United States for the District of Indiana at Indianapolis on Monday, February 16, 1903, and exhibited to said court the said order of the Floyd Circuit Court authorizing them

To appear and make to the said Court a full and complete statement of the condition of said action of Joseph T. Ryerson & Son against M. Zier & Co. in the Floyd Circuit Court, and all of the proceedings had therein.

Your petitioner is informed and believes, and so states and charges, that after said explanation and statement had been made and argued by said W. W. Watts before the Judge of the United States District Court, which argument and explanation consumed several hours, and continued over from Monday, February 16, until Tuesday, February 17, the said Judge of the United States District Court refused in any way or to any extent to reconsider, modify or set aside his said order directing said Frederic D. Connor, Receiver of the said United States District Court, to summarily take from the said Receiver of the Floyd Circuit Court the said property, but upon the contrary peremptorily demanded of Henry E. Jewett, as the representative of the New Albany Trust Company, Receiver, to state whether or not he would turn over the property in the hands of the New Albany Trust Company, as Receiver aforesaid, to Frederic D. Connor, Receiver, and also demanded of said W. W. Watts whether or not he, as counsel for the New Albany Trust Company, Receiver, would advise it to turn over said property to Frederic D. Connor, Receiver. Said Judge remarking at the time that he did not want to go to New Albany with a club but would do so if necessary to obtain the property. Under these circumstances, and not otherwise, and believing that the said demand of the said United States District Court was peremptory, the said W. W. Watts, as counsel for the said New Albany Trust Company, stated that he would advise the said New Albany Trust Company, Receiver, to turn over the said property to the said Frederic D. Connor, Receiver.

On the 17th day of February, 1903, the said W. W. Watts and the said Henry E. Jewett left Indianapolis,

as your petitioner is informed and believes, and so states and charges, under the impression that it was not necessary to enter any order respecting the proceedings which were had in the United States District Court on the 16th and 17th day of February, 1903, with respect to the said explanation and argument made by said Watts, and under the impression that no such order would be entered in respect thereto. But your petitioner says that an order was entered—a fact which, he is informed and believes, said Watts did not learn of until several days afterwards, and which your petitioner did not learn of until Monday, February 23, 1903, which order is as follows:

> "This cause coming on now to be heard upon the petition of Frederic D. Connor, filed herein on the 16th day of February, A. D., 1903, for the instructions of the court concerning the property and assets of said M. Zier & Co., which are now in the possession of the New Albany Trust Company, as receiver of the Floyd Circuit Court, in a suit therein pending against said M. Zier & Co., because of their insolvency; and the petitioning creditors in this cause and the said Connor, Receiver, as aforesaid, being now present and represented by George H. Hester and Wiliam Wilhartz, their solicitors, and said New Albany Trust Company, Receiver, as aforesaid, being now present and represented by Henry E. Jewett, its vice president, and by William W. Watts, its solicitor, and after argument by counsel, the said New Albany Trust Company, as receiver of the Floyd Circuit Court, by its vice president, having voluntarily offered and agreed by and with the consent and approval of said William W. Watts, its solicitor, in open court, to surrender full and immediate possession and control of the property and assets of said M. Zier & Co., in its possession or under its control, as receiver of the Floyd Circuit Court, to said Connor, as receiver of this court, upon the presentation by him to said New Albany Trust Company of a certi-

fied copy of the order of his appointment as such receiver heretofore made by this court.

"It is now hereby ordered by the Court that said Connor, Receiver aforesaid, forthwith present a certified copy of the order of his appointment as such receiver to the said New Albany Trust Company, and immediately thereupon take full possession and control of the property and assets of said M. Zier & Co. that are now in possession or under control of said New Albany Trust Company, as receiver of the Floyd Circuit Court."

The said New Albany Trust Company, as receiver of the said Floyd Circuit Court, was and is in no way a party to said bankruptcy proceedings in said United States District Court, and had and has in on way appeared therein except only upon the occasion, and under the circumstances, and by the authority hereinbefore stated.

On the 14th day of February, 1903, the said Frederic D. Connor, as said receiver of the United States District Court, by George H. Hester, as his attorney, appeared in the said Floyd Circuit Court in said action of Joseph T. Ryerson & Son against M. Zier & Co. and filed his verified petition therein, showing his appointment as such receiver by order of the United States District Court for the District of Indiana, and praying said Floyd Circuit Court for an order requiring the said New Albany Trust Company, as receiver of M. Zier & Co., to turn over and surrender to him, the said Frederic D. Connor, as receiver in bankruptcy, the property of the said M. Zier & Co., of which the said New Albany Trust Company, as receiver of M. Zier & Co., under the orders of the said Floyd Circuit Court was custodian, and thereupon said Frederic D. Connor, as such receiver, was made a party to said suit and the matter of said petition was continued until the next term of the said Floyd Circuit

Court. Copies of said petition and order made thereon are filed herewith and made part hereof, Marked Exhibit C

On the 19th day of February, 1903, W. W. Watts and the New Albany Trust Company, Receiver, appeared before the Judge of said Floyd Circuit Court at New Albany in Chambers, for the purpose of formally reporting to him the result of their appearance before the United States District Court at Indianapolis on the 16th and 17th days of February. The said Watts, as attorney for the New Albany Trust Company, then filed before the said Judge of the said Floyd Circuit Court a written petition and motion which was signed by him as attorney, as follows, to-wit:

"To the Honorable Judge of the Floyd Circuit Court in Chambers:

"Respectfully represents the New Albany Trust Company, Receiver herein, and W. W. Watts, one of its attorneys herein, that pursuant to the order of the court herein entered on Saturday, February 14, 1903, they on the 16th day of February, 1903, at Indianapolis, Ind., filed before the District Court of the United States for the District of Indiana, A. B. Anderson, Judge presiding, a statement of the New Albany Trust Company, Receiver, under the order of this court setting forth the facts by protestation and limited appearance only and showing to said court the reasons for a modification of its order theretofore entered appointing a receiver granting an injunction and restraining order and directing its receiver to take possession of the assets of M. Zier & Co.

"This receiver and said attorney say they made diligent efforts to carry out the orders of this court with respect to those matters, but the order of said court remains as it was, and they now move the court to strike and expunge from the files herein the petition of this receiver filed herein on the 14th day of February, 1903, and the order entered thereon."

Upon the aforesaid appearance made by said Watts and said Henry E. Jewett, vice-president of the said New Albany Trust Company, on the 16th and 17th days of February, 1903, before the United States District Court at Indianapolis, the Judge of the said court seemed to feel that the petition for advice which the said New Albany Trust Company, Receiver, by said Watts, as its attorney, filed in the Floyd Circuit Court on the 14th day of February, 1903, was in some way offensive to him, the said Judge of the District Court of the United States, and for this reason said Watts sought by said petition and statement filed before the Judge of said Floyd Circuit Court to have leave to strike out and expunge the said petition, and withdraw it from the files. Said Watts did advise, and continue to advise, and at no time gave any contrary advice that the said New Albany Trust Company, as receiver of the Floyd Circuit Court, should turn over to Frederic D. Conner, receiver of the United States District Court in such bankruptcy proceedings, all of the property, assets and effects of M. Zier & Co., alleged bankrupts, and for this purpose said petition and statement was filed by said Watts as attorney for the New Albany Trust Company, receiver, and was signed by him as such attorney on the 19th day of February, 1903, before the Judge of the said Floyd Circuit Court and this was done in good faith because he had stated to the Judge of the said United States District Court that he would advise so. Said Watts was much embarrassed by the condition of affairs, and felt that the Judge of the said Floyd Circuit Court might misconstrue his action in the premises, and before going to New Albany on the 19th of February, 1903, he sought this petitioner, who is a lawyer residing in Louisville, Ky., and who is a friend of said Watts, and asked him to go to New Albany with him for the purpose of appearing for

said Watts before the Judge of the Floyd Circuit Court and explaining the action of said Watts in agreeing to advise the New Albany Trust Company, Receiver, to turn over the said property to Frederic D. Connor, Receiver. The petitioner did go with said Watts to New Albany and was present when the said petition and statement was filed before the Judge of the Circuit Court of Floyd County on that day, and this petitioner did undertake to explain the situation and to satisfy the said Judge. After filing the said petition, and on the same day, to-wit, on the 19th of February, 1903, the said Judge of the said Floyd Circuit Court made and entered the following order upon said petition and statement, to-wit:

> "And the Judge after considering said statement refuses to concur therein, but orders that the matters and facts therein stated show that said W. W. Watts has been guilty of a contempt of court, and it is now ordered that a rule be issued against the said W. W. Watts to appear before the said Judge on the 21st day of February, 1903, at 3 o'clock p. m., and show cause, if any he has, why he should not be punished for contempt."

On the same day, to-wit, February 19th, 1903, the New Albany Trust Company, Receiver, by Henry E. Jewett, vice-president, filed before the Judge of said Floyd Circuit Court its other and separate petition, which is as follows:

> "The New Albany Trust Company, receiver in the above-entitled cause, respectfully shows to the court that in pursuance of the order heretofore made by this court it appeared by limited appearance and protestation only, as ordered by this court before Judge Anderson, of Indianapolis, Judge of the United States District Court for the District of Indiana, on Monday the 16th day of February, 1903, and that upon the hearing in that court, this receiver stated to the Hon-

orable Judge of said United States District Court that it was ready and willing to turn over to the receiver appointed by the Honorable Federal Court in bankruptcy proceedings of M. Zier & Co., then pending in said court, the property and assets of said M. Zier & Co. in the hands of this receiver, and this receiver further states that it has not yet been able to make up its accounts as receiver as to the receipts and disbursements, but that it is now preparing the same to be submitted to this court. But that it is ready to turn over to Frederic D. Connor, the receiver appointed by the United States District Court in bankruptcy all of the property of the said M. Zier & Co.; and this receiver now prays for an order of this court authorizing it to turn over to said Frederic D. Connor the property and assets of said M. Zier & Co. now in its hands, together with any balance in cash which may remain after such statement of its accounts shall be made up and presented and that upon delivering said property to said Frederic D. Connor, Receiver aforesaid, it be discharged from all further liability for or on account of said property or assets of said M. Zier & Co., so turned over to said Connor as such receiver.

"This receiver further asks that upon making up and presentation of its accounts for allowances to this court, that it be allowed to resign as receiver of the said M. Zier & Co., and that upon the approval of its accounts its said resignation be accepted by this court, and that it be fully and finally discharged as such receiver."

"All of which is respectfully submitted.

"The New Albany Trust Company,

"By Henry E. Jewett,

"Vice President."

And afterwards, to-wit, on the same day the Judge of said Floyd Circuit Court, upon consideration of said petition and statement, made the folloiwng order:

> "And the Judge after reading said tender of resignation holds that the matters set forth show that said receiver is in contempt of court, and the Judge orders that a rule issue at once against said receiver to appear before the undersigned Judge on the 21st day of February, 1903, at 3 o'clock, p. m., and show cause, if any it has, or can, why it should not be punished for contempt of court."

And on the same day, to-wit, the 19th day of February, 1903, after the said New Albany Trust Company had filed its petition and statement and asked leave to resign before the Judge of the said Floyd Circuit Court, the said New Albany Trust Company addressed to Frederic D. Connor, Receiver for the United States District Court, for the District of Indiana, the following letter, to-wit:

> "Fred D. Connor,
> Receiver of U. S. District Court,
> District of Indiana.
>
> In view of your demand that as receiver of the Floyd Circuit Court we deliver you the property of M. Zier & Co., as such receiver will state.
>
> "We, this morning, filed before the judge of the Floyd Circuit Court, in Chambers, report, a copy of which is attached hereto. Thereupon the judge stated orally that he wanted us to hold the property until our accounts as receiver were rendered and passed upon. We think this might be done to-morrow, and if you are willing to defer action until then, it will relieve us of embarrassment in the premises.
>
> "On the other hand, if you insist on immediate surrender of the property to you, we are bound to

say that we believe that to carry out in good faith the understanding with the honorable judge of the United States District Court of Indianapolis and our vice-president, H. E. Jewett, we ought to surrender the property to you at once.

"Very truly yours,

"The New Albany Trust Company,

"By H. E. Jewett,

"Vice-president."

"February 19, 1903."

On the same day and after receipt by said Frederic D. Connor of said communication, he expressed to the New Albany Trust Company, Receiver, his unwillingness to delay the delivery of said property to him, and thereupon on said day the said property was delivered to him by the said New Albany Trust Company, Receiver, without any authorization or direction of the Floyd Circuit Court or the judge thereof.

On the following day, namely, February 20, 1903, this petitioner and said Watts appeared before the judge of the said Floyd Circuit Court, because the said judge had by telephone on the evening before requested their presence, and in pursuance of this request and in obedience thereto, they appeared. On that day an order was entered removing the New Albany Trust Company as receiver of the Floyd Circuit Court in said action, and appointing Charles D. Kelso as Receiver in its stead, and directing the said Kelso as receiver to demand of the said New Albany Trust Company and of Frederic D. Connor, the immediate possession of the property of M. Zier & Co., which came into the hands of said New Albany Trust Company, as receiver in the action, and requiring the said Kelso, Receiver, if the said New Albany Trust Company, or said Frederic D. Connor, should fail or refuse to immediately turn over or surrender possession of said assets and property to said Kelso, Receiver,

to report that fact to the judge of the court. Before entering this order, the New Albany Trust Company had actually, under the advice of said Watts, turned over said property to Frederic D. Connor, Receiver of the United States District Court, for the District of Indiana, in said bankruptcy proceedings, as above stated. That thereupon said judge of the Floyd Circuit Court ordered said Kelso to draw up the papers to remove said New Albany Trust Company and appointing himself (Kelso) as receiver in its stead; and that petitioner at the time believed that said judge and said Kelso intended to base their action upon the opinion of said petitioner; that is, to intervene in the bankruptcy proceedings in the Federal Court; and that thereupon said Kelso stated to petitioner that he desired him to sign the petition drawn as the court had directed as attorney for one of his (Kelso's) clients, and that would make the matter all right, as he (Kelso) did not want to appear in the attitude of asking the removal when he himself was going to be appointed in the stead of the company removed. Petitioner says that at no time did he represent in fact any other party in the case except the said W. W. Watts, and that merely as a friend, without compensation, except as stated above.

On the 20th day of February, 1903, after the entry of said order appointing him receiver in the stead of the New Albany Trust Company, Charles D. Kelso filed a written report before the judge of said Floyd Circuit Court in which it was stated that he demanded of the New Albany Trust Company possession of all the property and assets of said M. Zier & Co., which came into its hands as receiver of said M. Zier & Co., and that said New Albany Trust Company failed and refused to surrender the possession thereof for the reason as stated by it that it had turned over the plant of M. Zier & Co.,

located on Pearl and Oak streets, in the city of New Albany, to Frederic D. Connor, and that as to the other assets of said M. Zier & Co. in its hands it intended to account forthwith to the honorable judge of the Floyd Circuit Court.

And afterwards on the same day upon consideration of said report, the judge of the said Floyd Circuit Court entered an order directing the issuance of a summary writ directed to the sheriff of Floyd county, requiring the said sheriff to immediately seize and take into his possession and deliver over to said Charles D. Kelso, Receiver of M. Zier & Co., all the property of said M. Zier & Co., which said Frederic D. Connor had in his possession, which property was described in said order.

As this petitioner is informed, upon said last named order a writ was issued by the clerk of said Floyd County Circuit Court, and that the same was executed and the property taken from possession of Frederic D. Connor, Receiver, and given into the possession of Charles D. Kelso, Receiver of the said Floyd Circuit Court.

4. After said property, which was in its hands as receiver, was delivered by the New Albany Trust Co., receiver of the said Floyd Circuit Court, to Frederic D. Connor, receiver of the said United States District Court in the manner and under the circumstances hereinbefore stated, and after the removal by the judge of the said Floyd Circuit Court of said New Albany Trust Company, as receiver, and the appointment of Charles D. Kelso as receiver in its stead, and after the said property was, under the aforesaid writ, taken by the sheriff of Floyd county, Indiana, from the possession of Frederic D. Connor and placed in the possession of Charles D. Kelso, receiver of this said Floyd Circuit Court, to wit, on the 21st day of February, 1903, the said Frederic D. Connor, Receiver, filed his cer-

tain petition and affidavit in said bankruptcy proceedings in said United States District Court, stating and showing, among other things, said facts, and, upon consideration of said petition and affidavit, the said United States District Court, on said 21st day of February, 1903, in said bankruptcy proceedings, made and entered an order, ordering, among other things, as follows:

> "It is further ordered by the court that Charles D. Kelso, as receiver of M. Zier & Co., under appointment of the Floyd Circuit Court, and individually; Claude Citizen, deputy sheriff of Floyd county, Indiana, and individually; Thomas Smithwick, custodian of the property of said M. Zier & Co., under an allleged appointment of Charles D. Kelso, as receiver of the Floyd Circuit Court; William W. Watts and D. A. Sachs, as attorneys for Charles D. Kelso, as such receiver, and individually, and ~~such~~ of them, are hereby required to appear before this court, at Indianapolis, in this District, on Wednesday, the twenty-fifth day of February, 1903, at nine o'clock, a. m., of said day, and then and there show cause why they should not be punished for contempt for the violation of the orders of said court hereinbefore made.
>
> "It is further ordered by the court that the marshal of this district shall serve ~~such~~ of the parties named in the foregoing order by the delivery of a copy thereof to them, and ~~such~~ of them . . .
>
> "It is ordered by the court that so far as the proceedings upon the petition of the receiver filed on the 21st day of February, 1903, are instituted against the parties named therein for a contempt of this court, they shall be docketed in this court, in Indianapolis, and henceforth conducted under the title of the United States against the parties aforesaid."

The petitioner further states, that afterward, on the same day, to wit, on the 21st of February, 1903, the United States District Attorney, for the District of Indiana, filed

an information in the District Court of the United States, for said district, which is as follows:

"United States of America, District of Indiana, ss.:

"In the District Court of the United States, for the District of Indiana.

"November Term, A. D., 1902, at Indianapolis.

"Now comes Joseph B. Kealing, attorney of the United States, in and for the District of Indiana, who prosecutes for the said United States in this behalf, in his own person, and in the name and on behalf of the United States, alleges, informs and declares as follows, to wit:

"That in a certain proceeding in bankruptcy in the said district of Indiana, to-wit:

"In the matter of M. Zier & Co., Bankrupts, Case No. 37, in the said court, pending at New Albany, Indiana, certain orders and decrees had been made by the said United States District Court, the Hon. Albert B. Anderson, presiding judge, whereby Frederic B. Connor was appointed receiver to take charge of the property, goods, wares and merchandise of the said M. Zier & Co., Bankrupts aforesaid. That he had qualified as such receiver, and had lawfully taken possession of the said property aforesaid, then and there situated at New Albany, under and by virtue of the said order made by the court aforesaid. All of which fully appears in the affidavit herewith and upon which this information is based.

"That on the 20th day of February, A. D., 1903, that Raymond J. Morris, Claude Sittison, Thomas Smithwich, Charles D. Kelso, William W. Watts, and D. A. Sachs, whose given name is unknown to this affiant who made said affidavit, and to the attorney for the United States herein, did then and there, wrongfully, unlawfully, knowingly and forcibly take from the said Frederic D. Connor, receiver as aforesaid, the property, goods and chattels of M. Zier & Co., Bankrupts, and then and there withhold, wrongfully, knowingly and unlawfully, the possession and

custody of said property from the said Frederic D. Connor, receiver as aforesaid, well knowing at the time that he was the lawfully appointed receiver of the said United States District Court aforesaid, and then and there knowingly, wrongfully, unlawfully and willfully disregard and disobey the orders and decrees of the said court, all of which more fully appears in the accompanying affidavit which is made a part hereof, whereby they are each guilty of contempt of this court, contrary to the form of the statutes and against the peace and dignity of the United States.

"Joseph B. Kealing,
"United States Attorney."

The said affidavit referred to in said information is the same affidavit made by Frederic D. Connor, and filed in said bankruptcy proceedings as aforesaid, and the same upon which said rule in said bankruptcy proceedings was awarded.

The said rule and information as to this petitioner and W. W. Watts were set for hearing on the 9th day of March, 1903, and on that day the petitioner appeared in said United States District Court, at Indianapolis, to respond to said rule and information. Upon the calling thereof the petitioner inquired of the court whether he was required to respond to said rule or plead to said information, and the court ruled and adjudged that the petitioner should respond to said rule and plead to said information conjointly. Whereupon the petitioner filed his response and pleas to said rule and information, separate from the response and pleas of W. W. Watts. The said response denied the jurisdiction and power of the said United States District Court to make the orders directing its said receiver summarily to take from said receiver of the said Floyd Circuit Court the said property in the hands of the latter, and asserted that the possession of the property, which the said receiver of the said United States District

Court acquired from the New Albany Trust Company, then acting as receiver of said Floyd Circuit Court, without the consent and against the orders of said court, was an unlawful possession, and that the said retaking of said property under the orders of the Floyd Circuit Court was a lawful taking, but, nevertheless, that the petitioner had nothing whatever to do with the retaking of said property; and the said response further set out all the facts substantially as they are stated in this petition.

Upon the filing of said response and pleas the district attorney offered to introduce the testimony of witnesses to dispute in evidence the matter of said response and pleas, to which the petitioner then objected, on the ground that for the purposes of the proceedings for contempt the said response and pleas should be taken as true, but the court overruled the objection, to which the defendant excepted.

Thereupon the trial proceeded, and the District Attorney for the United States introduced oral and documentary evidence, and the petitioner did the like. The trial consumed several days, and at the conclusion of all the evidence and after argument of counsel the court delivered an opinion and made and entered the said order and judgment hereinbefore set out, adjudging the petitioner guilty of contempt, and ordering that he be confined in the jail of Marion county, Indiana, for the period of sixty days, and that he pay the costs of said proceeding and be confined until such payment of costs was made. The petitioner was at once committed to custody, and under said order and judgment he is now wrongfully and unlawfully confined in said jail.

The petitioner files herewith as parts of this, his petition, a complete transcript of the record in the case of Joseph T. Ryerson & Son v. M. Zier & Co., pending in the Floyd County Circuit Court, marked "Exhibit A," and a

complete transcript of the record in the said bankruptcy proceedings in the United States District Court for the District of Indiana, including the proceedings upon said rule and information, marked "Exhibit B."

Wherefore, the petitioner prays that your honors grant and issue a writ of habeas corpus, directed to Robert Metzger, sheriff of Marion county, in the state of Indiana, and ex officio jailer of said county, and Henry C. Pettit, marshal of the United States for the District of Indiana, either or both, as your honors may deem proper in the premises, commanding them to produce before your honors upon a day to be named in the writ the body of your petitioner, to the end that your honors may inquire into the cause of the restraint of the petitioner's liberty.

And your petitioner further prays that your honors grant and issue a writ of certiorari agreeably to the rules and practice of this honorable court, and further that your honors order and direct, by such order as may be appropriate in the premises, that the petitioner be admitted to bail conditioned for his appearance before this honorable court on the return day of the writ of habeas corpus, and your petitioner prays for such other or further orders as to your honors may seem meet.

DAVID A. SACHS.

State of Indiana, Marion County, ss.:

David A. Sachs, being duly sworn, upon his oath says, that the averments of the foregoing petition are true as he verily believes.

DAVID A. SACHS.

Subscribed and sworn to before me, the undersigned, this 17th day of March, 1903.

(Seal.) LOU A. ROBERTSON,
Notary Public, Marion County, Indiana.

My commission expires Nov. 26, 1904.

State of Indiana, Marion County, Set:

I, William E. Davis, Clerk of the County of Marion, in the State of Indiana, and also Clerk of the Circuit Court within and for said county and State, the same being a Court of Record, and having a seal, do hereby certify that Lou A. Robertson was on March 17, 1903, an acting notary public within and for the county aforesaid, duly commissioned and qualified, and authorized by the laws of the State of Indiana, to take and certify all affidavits and the acknowledgments and proof of deeds or conveyances, and all other instruments of writing, and that the commission of the said Lou A. Robertson commenced on Nov. 26, 1900, and expires on Nov. 26, 1904.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court and county, at Indianapolis, Indiana, this 17th day of March, 1903.

(Seal.) WM. E. DAVIS, Clerk.

FILE COPY.

Office Supreme Court, U. S.
FILED
MAR 23 1903
JAMES H. McKENNEY,
Clerk.

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15 Orig.

Supreme Court of the United States

In re WILLIAM W. WATTS.

BRIEF FOR PETITIONER.

DAVID W. FAIRLEIGH,
BERNARD FLEENER,
Counsel for Petitioner.

J. C. NUNEMACHER PRESS, LOUISVILLE, KY.

Supreme Court of the United States

In re William W. Watts.

Brief for petitioner on motion for leave to file a petition for a writ of habeas corpus and a writ of certiorari.

STATEMENT.

The petition sets out in detail all the facts of the case. It is sufficient here to summarize them.

The Floyd County, Indiana, Circuit Court is a State Court of original general jurisdiction. In that Court Joseph T. Ryerson & Son, on the 30th day of December, 1902, filed a complaint against M. Zier & Co., a corporation of the State of Indiana, engaged in the business of boiler making in the City of New Albany, in Floyd County, in that State. Upon the complaint a summons was duly issued and duly served on the same day on which the complaint was filed. On the same day the plaintiff moved the Judge of the Court to appoint a Receiver of the property of the defendant, and notice of the motion having been given to the defendant, it appeared thereto. The Judge of the Court sustained the motion and made an order appointing the New Albany Trust Company Receiver. The Receiver qualified at once and as such Receiver took possession of the property of the defendant.

The complaint averred an indebtedness of the defendant to the plaintiffs of $15,000 on certain promissory notes. That the defendant owed debts aggregating about $65,000, which it is unable to pay. That the defendant is insolvent. That it is threatened with numerous suits by its creditors. That its property consists of a manufacturing plant, and that it is engaged in filling numerous unfinished orders, and that if its property should be taken on attachments or executions great loss would result to the defendant and its creditors. That it is necessary, in order to preserve the property of the defendant and keep it a going concern, that a Receiver be appointed. The prayer was for judgment on the debts and for the appointment of a Receiver.

By several orders thereafter entered the Receiver was authorized and directed to continue the business, complete unfinished contracts, buy new material for that purpose, etc. Under these orders the Receiver acted and incurred many liabilities and obligations as Receiver.

A statute of Indiana provides as follows :

> "A Receiver may be appointed by the court, or a judge thereof, in vacation in the following cases:
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> . . . . . .
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> "Fifth. When a corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights."
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> (Burns' Indiana Statute, Sec. 1236 and Sub-Sec. 5.)

In this condition of affairs, while the Receiver was engaged in operating the plant under the orders of the Floyd Circuit Court, on the 6th of February, 1903, the Inland Steel Company, a creditor of M. Zier & Co., who had theretofore appeared in the suit in the State Court and participated in the proceedings there, together with another creditor, filed their petition in involuntary bankruptcy in the United States District Court for the District of Indiana, against M. Zier & Co. No one was made a party defendant to the petition in the bank

ruptcy proceedings, except the alleged bankrupt debtor, M. Zier & Co., but the petition itself alleged that the property of the debtor was in the hands of a Receiver appointed by a State Court, without alleging in what proceedings or by what Court the Receiver was appointed.

Afterward, on the 11th of February, 1903, one of the petitioning creditors, the Inland Steel Company, filed its petition in the bankruptcy proceedings, showing to the Court that the property of the debtor was in the hands of the New Albany Trust Company as Receiver of the Floyd Circuit Court, appointed as such in the action of Joseph T. Ryerson & Son against M. Zier & Co. then pending in that Court. This petition contained the following further statement:

> "That said Receiver is now running the business of M. Zier & Co. and is completing certain contracts, and for that purpose has employed a large number of men in the manufacturing establishment of said M. Zier & Company, and has placed in charge of said plant one Michael Zier, who is the president and treasurer of said alleged bankrupt. That said Michael Zier is wholly incompetent for said business; that he is wholly unfamiliar with bookkeeping and necessary office work which is essential to the safe conduct of said business; and your petitioner avers that if said Receiver is permitted to remain in charge, that it will result to the injury and detriment of such of the creditors of said M. Zier & Co. who are entitled to participate in said bankrupt estate.
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> "Your petitioner further states that W. W. & J. R. Watts, attorneys at Louisville, Ky., are the attorneys for said Joseph T. Ryerson & Son in said proceedings wherein said New Albany Trust Company was appointed Receiver, and that said W. W. & J. R. Watts are also attorneys for said Receiver, and your petitioner fears that said Receiver is friendly to said Joseph T. Ryerson & Son and said alleged bankrupt, to the detriment of the creditors at large of said alleged bankrupt."

The petition prayed the appointment of a Receiver in the bankruptcy proceedings.

Upon that petition, on the day on which it was filed, February 11, 1903, the United States District Court made an order in the bankruptcy proceedings, appointing Frederic D. Connor Receiver of the property of the alleged bankrupt, M. Zier & Co. The order appointing the Receiver in the bankruptcy proceedings contained, among other things, the following:

> "Said Receiver is ordered and directed to take into his possession the sheet iron and boiler manufacturing plant in said City of New Albany, together with all tools, machinery, appliances, materials and finished property within and about the plant in said City of New Albany, which said plant is located at the corner of Pearl and Oak Streets in the City of New Albany, and all other property of said M. Zier & Co., wheresoever found and situated. It is further ordered and adjudged by the Court that the New Albany Trust Company be and it is hereby required to deliver up to said Frederic D. Connor as Receiver all the said property and effects of said M. Zier & Co., now in its possession and to refrain hereafter from interfering in any way with the said Receiver's possession and control of the same."

The Receiver appointed in the bankruptcy proceedings duly qualified as Receiver under the order of appointment and on the 13th of February, 1903, appeared at New Albany and demanded of the New Albany Trust Company, Receiver of the State Court, that the latter deliver to him all the assets and effects of said M. Zier & Co. in its hands. On the next day, February 14th, the receiver in the bankruptcy proceedings, by his attorney, filed in the action pending in the Floyd Circuit Court, wherein the New Albany Trust Company was appointed receiver, his petition showing his appointment as receiver by the United States District Court in

the bankruptcy proceedings, and praying the Floyd Circuit Court to enter an order requiring the New Albany Trust Company as receiver to turn over and surrender to him as receiver in bankruptcy the property of M. Zier & Co., which the New Albany Trust Company as receiver held in its possession. This was the last day of the then term of the Floyd Circuit Court, the next term whereof began on the 9th of March following. No action was taken on the petition of the receiver appointed in the bankruptcy proceedings, and an order was entered continuing the petition until the next term of the Floyd Circuit Court. The petition of the receiver appointed in the bankruptcy proceedings, which was filed in the Floyd Circuit Court, made a general appearance in that court without any reservations whatever.

Notwithstanding the fact that the Receiver in the bankruptcy proceedings filed his petition in the suit in the State Court he continued his demand for the delivery of the property to him by the New Albany Trust Company as Receiver. The order appointing him as Receiver directed him to take the possession of the property from the New Albany Trust Company as Receiver and required the latter to deliver the possession of the property to the Receiver in the bankruptcy proceedings. It was thought by the New Albany Trust Company, Receiver, and by its attorney, William W. Watts, that the peremptory order made in the bankruptcy proceedings directing the Receiver there appointed to take the property from the possession of the Receiver appointed in the State Court was inadvertently made by the Bankrupt Court, and that the Bankrupt Court would, upon suggestion, rescind so much of its order as made such requirement. So believing, William W. Watts, attorney for the Receiver in the State Court, telephoned to the Judge of the United States District Court at Indianapolis, and requested him to direct the Receiver in the bankruptcy proceedings not to proceed further with

his demand until the petitioner and the New Albany Trust Company could have an opportunity to explain to the Court the exact circumstances and condition of the action of Joseph T. Ryerson & Son against M. Zier & Co., pending in the Floyd Circuit Court.

The Judge of the United States District Court stated in reply by telephone that a hearing of the matters might be had at Indianapolis on February 16th; whereupon the New Albany Trust Company, Receiver, filed its petition in the Floyd Circuit Court, in which it was stated that the United States District Court had appointed a Receiver in the bankruptcy proceedings and that the Receiver so appointed was demanding the possession of the property in the hands of the State Court Receiver, and that in the opinion of the Receiver and its attorney the order of the United States District Court directing its Receiver to peremptorily take possession of the property was inadvertently made, and further, that the State Court Receiver and its attorney believed that the United States District Court, upon suggestion of all the facts, would rescind its peremptory order, and the petition prayed the advice of the Court in the premises. Upon that petition the Floyd Circuit Court on the same day made an order authorizing the Receiver and its attorney, William W. Watts, to go to Indianapolis and without entering their appearance, and by protestation against appearance except only for the purpose of making the explanation, state to the United States District Court the condition of the record in the Floyd Circuit Court. Accordingly Henry E. Jewett, Vice-President of the New Albany Trust Company, Receiver, and William W. Watts, its attorney, appeared before the United States District Court at Indianapolis on the 16th day of February and exhibited to that Court the order of the Floyd Circuit Court authorizing them to appear and make a statement and argument.

These proceedings were protracted until February 17th when, ultimately, the Judge of the United States District

Court demanded peremptorily of Henry E. Jewett as the representative of the New Albany Trust Company, Receiver, to know whether or not he would turn over the property in the hands of the New Albany Trust Company, Receiver, to Frederic D. Connor, Receiver, and stated that he did not wish to go down to New Albany with a club, but if it were necessary to go with a club, he would do so, whereupon Henry E. Jewett answered that he would turn over the property. The same demand was made by the Judge of the United States District Court of William W. Watts as the attorney for the New Albany Trust Company, Receiver, and he under like circumstances answered that he would advise the New Albany Trust Company, Receiver, to turn the property over to the Receiver appointed by the United States District Court.

Watts and Jewett left Indianapolis on the afternoon of February 17th, the former going to Louisville, Ky., and the latter to New Albany, Ind.

The situation was an embarrassing one to William W. Watts as well as to Henry E. Jewett, the representative of the New Albany Trust Company. They knew that they had no authority to make the agreement to turn over the property, because they had not been authorized to do so by the Floyd Circuit Court. Watts so keenly felt the situation in which he was put that on the following day, February 18th, in the afternoon he asked Mr. David A. Sachs, who is a lawyer and his friend, to go to New Albany with him for the purpose of aiding him in undertaking to explain to the Judge of the Floyd Circuit Court what had happened at Indianapolis, and as far as possible to justify Watts and persuade the Judge of the Floyd Circuit Court to make an order ratifying what had been done. They did go to New Albany together and made an oral statement to the judge of the Floyd Circuit Court. The Judge became positively angry and they returned to Louisville. On the following morning Mr. Watts and Mr. Sachs returned to New Albany and Mr.

Watts filed before the Judge a formal written statement or petition stating what had been done at Indianapolis, and asking leave of the Court to expunge from the record the order made on the 14th of February authorizing the New Albany Trust Company, Receiver, and its attorney to go to Indianapolis, and also to withdraw from the files the petition upon which that order was based. This was done in view of the fact that the Judge of the United States District Court was for some reason very much offended because of that order and petition. So far from making the order requested the Judge of the Floyd Circuit Court at once entered an order requiring Watts to show cause, if any he could, why he should not be held in contempt of Court.

On the same day, February 19, 1903, the New Albany Trust Company, receiver, filed in the Floyd Circuit Court its petition signed by Henry E. Jewett, stating what had occurred at Indianapolis, and asking leave of the court to turn the property in its hands over to the Receiver appointed by the United States District Court in the bankruptcy proceedings. So far from granting the authority asked, the Judge of the Floyd Circuit Court made an order citing the New Albany Trust Company to show cause why it should not be punished for contempt of court.

The judge of the Floyd Circuit Court requested all of the attorneys in the case to appear at New Albany before him on the following morning, February 20th.

In the meantime the Receiver of the United States District Court was pressing his demand for a delivery of the property to him, and on the evening before the New Albany Trust Company wrote him a letter stating the fact that it had filed its petition in the Floyd Circuit Court asking leave of that court to turn over the property, and that the judge had orally stated that he wanted the Receiver of the Floyd Circuit Court to hold the property until the accounts of the Receiver were rendered and passed upon, and suggested that this might be accomplished on the next

day, February 20th, and asking the Receiver of the United States District Court to defer action until that time as it would relieve the Receiver appointed by the State Court from much embarrassment; but stated further that if the Receiver appointed by the United States District Court would not defer action until the next day that the New Albany Trust Company, as Receiver, would turn the property over without any action at all of the Floyd Circuit Court, because it had stated to the Judge of the United States District Court that it would do so. The Receiver of the United States District Court expressed his unwillingness to delay the delivery of the property, whereupon the property was turned over to him by the New Albany Trust Company, in disregard of the order of the State Court.

In deference to the request of the Judge of the Floyd Circuit Court, Watts and Sachs went to New Albany on the morning of February 20th. During that day the Judge made an order removing the New Albany Trust Company as Receiver and appointing in its stead Charles D. Kelso as Receiver, and ordering him as Receiver to demand of the New Albany Trust Company and of Frederic D. Connor the possession of the property of M. Zier & Co., and ordering him further to report back to the Court whether or not the demand had been complied with. Late in the evening of that day Charles D. Kelso, Receiver, reported to the Judge of the Floyd Circuit Court that his demand for the property had been refused; whereupon the Judge of the Floyd Circuit Court made an order directing the issuance of a writ to the Sheriff of Floyd County, requiring him to take possession of the property from Frederic D. Connor and deliver it to Charles D. Kelso, Receiver. That writ was placed in the hands of the Sheriff and executed that evening without any force or violence, and the property was thus placed in the hands of Charles D. Kelso, Receiver of the Floyd Circuit Court.

On the 21st day of February, 1903, Frederic D. Connor, who was the Receiver appointed in the bankruptcy proceed-

ings, filed his petition and affidavit in those proceedings in the United States District Court, and upon that affidavit the Court made an order citing Charles D. Kelso, the Sheriff of Floyd County, his two deputies, the watchman placed in charge of the property by Kelso, Receiver, and William W. Watts and D. A. Sachs to appear before him on a certain day to show cause, if any they could, why they should not be held in contempt of that Court for a violation of its orders.

On the same day the United States District Attorney filed an information based upon the same affidavit, charging all these parties with the offense of contempt of the United States District Court, in violating its orders made in the bankruptcy proceedings, and in taking the property from the hands of its Receiver, and in withholding the property from his possession. The rule and information were tried as to Kelso, the Sheriff and his deputies, and the watchman placed in charge of the property by Kelso, Receiver, and they were found guilty of contempt, and Kelso was ordered to be confined in the Marion County, Indiana, jail for a period of sixty days, and the others for various periods less than that.

The information and rule were set for trial as to William W. Watts and D. A. Sachs at Indianapolis on the 9th day of March, 1903. They then appeared and the Court required them to respond and plead to the rule and information conjointly. They filed separate responses and pleas.

The response of William W. Watts was in substance as follows:

(1) That he is not guilty.

(2) Denying that he committed any act, or advised or consented to the commission of any act, in disobedience of any order of the Court, and denying that he in any way, either directly or by aiding, abetting or advising, forcibly or in any other way, took the property from Frederic D. Connor, Receiver, or withheld the custody of the property from him;

yet that the orders of the District Court, insofar as they peremptorily directed the Receiver of the United States District Court to take the property from the hands of the Receiver of the State Court, were void and beyond the power of the Court to make, and that the possession which the Receiver of the United States District Court acquired in the manner in which it was acquired was a wrongful and unlawful possession, and that the retaking of said property in the manner in which it was retaken was a lawful taking.

(3) All of the record facts were stated in full, both in the action in the State Court and in the bankruptcy proceedings; and further, the respondent stated that he had nothing whatever to do with the making of the order removing the New Albany Trust Company as Receiver and appointing Charles D. Kelso as Receiver, or with the order directing the issuance of a writ to retake the property, and did not know that such a writ had been ordered until the day after it had been ordered, nor did he know of the taking of the property thereunder until the next day.

Upon the filing of this response the respondent insisted that it should be taken as sufficient, but the Court ruled otherwise, and the trial proceeded, and the United States District Attorney introduced evidence and the defendant introduced evidence, and after argument of counsel the Court adjudged the respondent, William W. Watts, guilty of contempt, and ordered that he be confined in the Marion County jail at Indianapolis, Indiana, for a period of sixty days, and he is now so confined in that jail under that order.

ARGUMENT.

1. "It is established by the decision of this Court, that while 'the exercise of the power of punishment for contempt of their orders, by courts of general jurisdiction, is not subject to review by writ of error, or appeal to this Court,' yet, when 'a court of the United

States undertakes, by its process of contempt, to punish a man for refusing to comply with an order which that court had no authority to make, the order itself, being without jurisdiction, is void, and the order punishing him for the contempt is equally void;' and that, 'when the proceedings for contempt in such a case results in imprisonment, this court will, by its writ of *habeas corpus*, discharge the prisoner.'"

The foregoing is the first paragraph of the opinion of Mr. Justice Matthews *In re* Ayers, 123 U. S., 485.

The rule thus stated is the doctrine of an unbroken line of decisions of this Court.

Ex Parte Lange, 18 Wall., 163.
Ex Parte Rowland, 104 U. S., 604.
Ex Parte Fisk, 113 U. S., 713.
In re Ayers, 123 U. S., 443.
In re Lane, 135 U. S., 443.
In re Tyler, 149 U. S., 164.
In re Bonner, 151 U. S., 242.
In re McKenzie, 180 U. S., 536.

2. "The writ of certiorari will be allowed by this Court in aid of the writ of *habeas corpus* and for the purpose of enlarging the scope of the writ of *habeas corpus*."

Ex Parte Lange, 18 Wallace, 163.
In re Chetwood, 165, U. S., 443.
U. S. Revised Statutes, Sec. 716.

3. This Court has over and over again held the proposition to be universal that where one court has acquired jurisdiction over property another court may not summarily interfere with that possession.

This rule is stated as follows by Mr. Justice Matthews, in Covell vs. Heyman, 111 U. S. 182:

"The forbearance which courts of co-ordinate jurisdiction, administered under a single system, exercise toward each other, whereby conflicts are avoided by

avoiding interference with the process of each other, is a principle of comity, with perhaps, no higher sanction than the utility which comes from concord; but between State courts and those of the United States, it is something more. It is a principle of right and law, and, therefore, of necessity. It leaves nothing to discretion or mere convenience. These courts do not belong to the same system, so far as their jurisdiction is concurrent; and although they coexist in the same space, they are independent and have no common superior. They exercise jurisdiction, it is true, within the same territory, but not in the same plane; and when one takes into its jurisdiction a specific thing, that *res* is as much withdrawn from the judicial power of the other as if it had been carried physically into a different territorial sovereignty. To attempt to seize it by a foreign process is futile and void."

Sheilds vs. Coleman, 157 U. S. 168.

3. The exclusive admiralty jurisdiction of the Federal Courts under the Constitution of the United States does not override the rule that where one court first acquires jurisdiction over and possession of the *res* another court may not summarily interfere with that possession.

In Taylor, *et al*, v. Carryl, 20 How., 583, it was argued that the general rule of comity and necessity does not apply to a case where a Federal Court is exercising its exclusive admiralty jurisdiction and that such jurisdiction when invoked supersedes and annuls the possession of the *res* theretofore acquired by a State Court. In denying this proposition Mr. Justice Campbell, delivering the opinion of this Court, said:

"But it is in this Court that the principle stated in Payne vs. Drew has received its clearest illustration, and been employed most frequently, and with most benignant results. It forms a recognized portion of the duty of this court to give preference to such principles and methods

of procedure as shall serve to conciliate the distinct and independent tribunals of the States of the Union, so that they may co-operate as harmonious members of a judicial system coextensive with the United States, and submitting to the paramount authority of the same Constitution, laws and Federal obligations; the decisions of this Court that disclose such an aim, and that embody the principles and modes of administration to accomplish it, have gone from the Court with authority, and have returned to it, bringing the vigor and strength that is always imparted to magistrates, of whatever class, by the approbation and confidence of those submitted to their government."

4. The power of the Congress under the Constitution of the United States, to pass a uniform system of bankrupt laws, does not when exercised make the bankrupt courts of the United States so far superior to the State courts as that the rule of comity and necessity, which requires that one Court shall not summarily disturb the possession of property which another Court has acquired and holds at the time of the institution of bankruptcy proceedings, is suspended, so that a bankruptcy court may summarily wrest the possession of such property from the Court which first acquired the possession.

In Peck, et al, vs. Jenness, et al, 7 How. 611, it was held that this doctrine of comity applied with equal force as between the Bankrupt Courts of the United States on the one hand and the State Courts on the other. There this Court, through Mr. Justice Grier, said:

"It is a doctrine of law too long established to require a citation of authorities, that, where a court has jurisdiction, it has a right to decide every question which occurs in the cause, and whether its decision be correct or otherwise, its judgment till reversed, is regarded as binding in every other Court; and that where the jurisdiction of a Court, and the right of a plaintiff to prosecute his suit in it, have once attached, that right can not be arrested or taken away by proceedings in another Court. These

rules have their foundation not merely in comity, but on necessity. For if one may enjoin, the other may retort by injunction, and thus the parties be without remedy; being liable to a process for contempt in one if they dare to proceed in the other. Neither can one take property from the custody of the other by replevin or any other process, for this would produce a conflict extremely embarrassing to the administration of justice."

This doctrine has been held by this Court to be controlling upon bankrupt courts in the following cases:

Marshall vs. Knox, 16 Wall. 551.

Doe vs. Childress, 21 Wall. 643.

Eyster vs. Gaff, 1 Otto, 521.

This Court, in the case of Metcalf vs. Barker, decided December 1, 1902, distinctly holds that this general doctrine of comity is applicable in all its vigor to the bankrupt courts of the United States under the present bankrupt law. This Court there refers to the case of Peck vs. Jenness, and affirms its application to bankrupt courts to-day.

The same proposition was held by this Court in the case of Pickins vs. Dent, decided on December 1, 1902.

Mr. Justice Miller, sitting on Circuit in the case of Johnson, assignee, vs. Bishop, Sheriff, Woolworth, 324, delivered an instructive opinion holding the same proposition under the bankrupt law of 1867.

5. The question is not one of the *right of possession*. It is a question of proper procedure. The *necessity* out of which the rule of comity arises exists in the case where the bankruptcy court has in fact the ultimate right of possession as well as in the case where the State Court has the ultimate right of possession. The real question is not at all which Court has the *right* of possession, but whether a court which has the actual possession shall be disturbed in that possession by a summary process from another court which claims that it has the right of possession. This being true as we understand

the rule, it is useless to argue how far the proceedings in bankruptcy annul assignments made under State laws or receiverships in State courts based upon insolvency of the defendant debtor. All these questions are aside from the question at bar. The question here is one merely of orderly procedure. If the question of right to the possession should in any way be conceived to be involved it is sufficient to say that at the time the United States District Court for the District of Indiana made its summary orders in the bankruptcy proceedings there had been no adjudication that the debtor is a bankrupt and *non constat* that he ever would be. Moreover, after the appointment of the Receiver in the bankruptcy proceedings and after the entry of the order directing him summarily to take possession of the property in the hands of the State Court Receiver, he voluntarily appeared by petition in the proceedings in the State Court and asked that Court to direct its Receiver to turn the property over to him. This petition was filed on the last day of the term of the State Court and no action was, therefore, taken on it, but it was continued to the next term of the Court, which began about three weeks thereafter. Subsequently to this the bankruptcy court entered another order redirecting its Receiver to summarily take possession of the property in the hands of the State Court Receiver and under this order the Receiver in bankruptcy pressed his demands until the State Court Receiver, without any authority from the Court appointing him, and in direct opposition to the Judge of the State Court, delivered the property to him, but this was not done until after the State Court Receiver had been told by the Judge of the United States District Court that he did not wish to come to New Albany with a club, but that he would do so if necessary.

Such was the manner in which the Receiver of the Bankrupt Court acquired the possession of the property from the Receiver of the State Court.

6. This Court has held that the Bankrupt Courts not only can not issue summary process to recover property held adversely, but that neither the Bankrupt Courts nor the Circuit Courts of the United States have jurisdiction of plenary suits for that purpose, except they be brought in the Federal Courts by consent of the party sued.

Bardes vs. Hawarden Bank, 178 U. S. 524.
Lou. Trust Co. vs. Comingor, 184 U. S. 18.

In the case at bar the State Court had its Receiver take the property into its possession and authorized it to continue the business and complete unfinished contracts which the defendant in the suit had made before the appointment of the Receiver. The Receiver was authorized to purchase new material for this purpose, and he had done so. Under the orders of the State Court he had contracted debts and obligations, to all of which the property in its hands must respond. It would be monstrous to hold that the Bankrupt Court, in this condition of affairs, had the right to summarily take the property from the State Court and leave all these matters unsettled. We submit that the State Court, having possession of the property by the appointment of a Receiver, in no way stands in the position of an assignee under a voluntary assignment for the benefit of creditors, yet, if such were the holding, still the property is in the adverse possession of the State Court, within the meaning of the decisions of this Court above cited, until the claims and demands created by the orders of the State Court shall be fully satisfied and discharged.

7. It is claimed that the property was voluntarily turned over by the Receiver of the State Court to the Receiver in the bankruptcy proceedings. The Receiver in the State Court was not a party to the bankruptcy proceedings. He had nowhere appeared in those proceedings by any pleading of any kind; yet the order

entered in the bankpuptcy proceedings as of date February 17, 1903, contains the following:

> "And said New Albany Trust Company, Receiver as aforesaid, being now present and represented by Henry E. Jewett, its Vice-president, and by William W. Watts, its solicitor, and after argument by counsel, the said New Albany Trust Company as Receiver of the Floyd Circuit Court by its said Vice-president having voluntarily offered and agreed by and with the consent and approval of said William W. Watts, its solicitor, in open Court to surrender full and immediate possession and control of the property and assets of said M. Zier & Co. in its possession or under its control as Receiver of said Floyd Circuit Court, to said Connor as Receiver of this Court upon the presentation by him to said New Albany Trust Company of a certified copy of the order of his appointment as such Receiver heretofore made by this Court."

That consent, whatever it amounted to, was obtained under the singular circumstances hereinbefore stated. It was not in fact voluntary, but the consent was made following the assertion of the court, that it did not wish to go New Albany with a club, but that it would do so if necessary. But, however all this may be, the consent amounted to nothing. The appearance was made under an order of the Floyd Circuit Court expressly limiting the power of the Receiver to the making of a statement of the condition of the record of the Floyd Circuit Court. That order directed the Receiver of the State Court not to make a general appearance, but a limited one only for the sole purpose of of explaining to the United States District Court the condition of the record in the State Court. After that statement was made the peremptory inquiry was made by the Court of the representative of the Receiver whether he would turn the property over. Feeling that he must do so or suffer the consequences, the Receiver, in violation of the

orders of the State Court made the agreement. The agreement amounted to nothing. It was beyond the power of the Receiver to make. The Receiver was the mere custodian, with all its powers and rights confined by the orders of the State Court. Beyond this he had no power. This the United States District Court knew at the time. It is fundamental that a receiver has no powers aside from those conferred upon him by the orders of the court by which he was appointed. If a receiver might give up the property in his possession which he holds for the court, and as an arm of the court, without the consent or direction of the court which appointed him, there would be an end of receiverships. This Court said in Davis v. Gray, 16 Wall. 217, with respect to the powers of receivers:

> "A receiver is appointed upon a principle of justice for the benefit of all concerned. Every kind of property of such a nature that, if legal, it might be taken in execution, may, if equitable, be put into his possession. Hence the appointment has been said to be an equitable execution. He is virtually a representative of the court and of all the parties in interest in the litigation wherein he is appointed. He is required to take possession of property as directed, because it is deemed more for the interests of justice that he should do so than that the property should be in the possession of either of the parties in the litigation. He is not appointed for the benefit of either of the parties, but of all concerned. Money or property in his hands is in *custodia legis*. He has only such power and authority as are given him by the Court, and must not exceed the prescribed limits. The Court will not allow him to be sued touching the property in his charge, nor for any malfeasance as to the parties, or others, without its consent; nor will it permit his possession to be disturbed by force, nor violence to be offered to his person while in the discharge of his official duties. In such cases the Court will vindicate its authority, and, if need be, will punish the offender by fine and imprisonment for contempt. The same rules are applied to the possession of a sequestrator. Where the property in the hands of

the receiver is claimed by another, the right may be tried by proper issues at law, by a reference to a master or otherwise, as the court in its discretion may see fit to direct."

We regard it wholly unnecessary to cite authorities to show that the act of the Receiver in agreeing to deliver up the property in his hands was wholly void for want of authority from the Court which appointed him.

8. The unauthorized agreement of the Receiver of the State Court to give up the property in his hands to the Receiver of the Bankrupt Court, being void for want of authority, it follows that his carrying out the agreement by actually delivering the property was also wrongful. By that act Frederic D. Connor came into the wrongful possession of the property and the wrong was committed as against the State Court and with respect of property which was then in the hands of the State Court in *custodia legis*. The State Court, therefore, had the power and the right, by processes issued from the Court directed to the proper officer, to restore the property to its custodian. This the State Court did by putting a writ into the hands of the Sheriff of the County, an officer of that Court. The Sheriff peaceably executed the writ and restored the property to the rightful possession of the Court by putting it into the hands of the Court's Receiver as the writ directed the Sheriff to do. That retaking of the property was a lawful taking. Frederic D. Connor was in possession of the property. He could not justify his possession by asserting that he was Receiver of the United States District Court, and as such held the property ; for, notwithstanding the fact that he was the Receiver of the United States District Court, his possession was not a lawful possession under any lawful order, or any lawful proceeding had by him as such Receiver. He, therefore, held the property unlawfully and the fact that he was receiver did not justify the unlawful holding.

This point has been expressly decided by this Court in White vs. Schloerb, 178 U. S. 542. In that case, after an adjudication in bankruptcy, an action of replevin in the State Court was commenced against the bankrupt to recover property in the possession of and claimed by the bankrupt at the time of that adjudication, and in the possession of the Referee in Bankruptcy at the time when the action of replevin was begun. The property having been taken under the replevin proceedings it was held by this Court that the District Court of the United States sitting in bankruptcy has jurisdiction by summary proceedings to compel the return of the property seized. In that case in the opinion rendered this Court uses this expression:

> "Not going beyond what the decision of the case before us requires, we are of opinion that the Judge of the Court of Bankruptcy was authorized to compel persons, who had forcibly and unlawfully seized and taken out of the judicial custody of that Court property which had lawfully come into its possession as part of the bankrupt property, to restore that property to its custodian, and therefore, our answer to the first question would be: 'The District Court sitting in Bankruptcy had jurisdiction by summary proceedings to compel the return of the property seized.'"

In the very recent case of Metcalf v. Barker, decided by this Court on December 1, 1902, Mr. Chief Justice Fuller, in delivering the opinion of the Court, referred to the quotation last above made from the case of White v. Schloerb, and said:

> "This cautious utterance — and courts must be cautious when dealing with the conflict of jurisdiction—sustains as far as it goes the converse of the proposition when presented by a different state of facts."

9. Submitting that the Court must hold that the writ of habeas corpus and the writ of certiorari should issue, we ask that the Court, by some appropriate order

conformably to the practice of this Court, direct the petitioner to be admitted to bail, conditioned for his appearance in this Court on the return day of the writ.

DAVID W. FAIRLEIGH,
BERNARD FLEXNER,
Counsel for Petitioner.

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Supreme Court of the United States.

In re WILLIAM W. WATTS.

BRIEF FOR PETITIONER ON FINAL HEARING.

DAVID W. FAIRLEIGH,
BERNARD FLEXNER,
Counsel for Petitioner.

POINTS AND AUTHORITIES.

1. When a person is imprisoned by a United States Court for refusing to comply with an order of that Court, and such order is beyond the jurisdiction or power of the Court to make, the order itself is void, and the order punishing for contempt is likewise void, and this Court will, on writ of habeas corpus, discharge the person so imprisoned.

Ex parte Lange, 18 Wall. 163.
Ex parte Rowland, 104 U. S. 604.
Ex parte Fisk, 113 U. S. 713.
In re Ayres, 123 U. S. 443.
In re Lane, 135 U. S. 443.
In re Tyler, 149 U. S. 164.
In re Bonner, 151 U. S. 242.
In re McKenzie, 180 U. S. 536.

2. An order of a United States District Court sitting in bankruptcy, commanding its Receiver to peremptorily take from the possession of a Receiver of a State Court property in his hands as such at the time the bankruptcy proceedings were begun, is void.

Peck vs. Jenness, 7 How. 611.
Taylor vs. Carryl, 20 How. 583.
Marshall vs. Knox, 16 Wall. 551.
Doe vs. Childress, 21 Wall. 643.
Covell vs. Heyman, 111 U. S. 182.
Shields vs. Coleman, 157 U S. 168.
Johnson, Assignee, vs. Bishop, Sheriff, Woolworth, 324.
Metcalf vs. Barker, 23 Sup. Ct. Rep. 69.
Pickens vs. Roy, 23 Sup. Ct. Rep. 78.
Louisville Trust Co. vs. Comingor, 184 U. S. 18.
Bardes vs. Hawarden Bank, 178 U. S. 524.

3. A Receiver appointed by a Court has no authority to surrender the possession of the property in his hands without authority from the Court which appointed him, and the person who so acquires the possession of the property from him is in wrongful possession, and the Court may issue an appropriate writ to restore the possession of the property to a custodian of the Court.

Davis vs. Gray, 16 Wall. 217.

Shields vs. Coleman, 157 U. S. 168.

White vs. Schloerb, 178 U. S. 542.

Metcalf vs. Barker, 23 Sup. Ct. Rep. 78.

Supreme Court of the United States.

IN RE WILLIAM W. WATTS.

BRIEF FOR PETITIONER ON FINAL HEARING.

STATEMENT.

The petition sets out in detail all the facts of the case. It is sufficient here to summarize them.

The Floyd County, Indiana, Circuit Court (hereinafter called the State Court) is a State Court of original general jurisdiction. In that Court Joseph T. Ryerson & Son, on the 30th day of December, 1902, filed a complaint against M. Zier & Co. (R., p. 1), a corporation of the State of Indiana, engaged in the business of boiler making in the City of New Albany, in Floyd County, in that State. Upon the complaint a summons was duly issued and duly served on the same day on which the complaint was filed. (R., pp. 11-12.) On the same day the plaintiff moved the Judge of the Court to appoint a Receiver of the property of the defendant, and notice of the motion having been given to the defendant, it appeared thereto. The Judge of the Court thereupon sustained the motion and made an order appointing the New Albany Trust Company Receiver, and it qualified at once as such receiver and took possession of the property of the defendant. (R., pp. 13-15.)

The complaint averred an indebtedness of the defendant to the plaintiffs of $15,000 on certain promissory notes. That the defendant is insolvent and owed debts aggregating about $65,000, which it is unable to pay. That it is threatened with numerous suits by its creditors. That its property consists of a manufacturing plant; that it is engaged in filling numerous unfinished orders, and if its property should be taken on attachments or executions great loss would result to the defendant and its creditors. That it is necessary, in order to preserve the property of the defendant and keep it a going concern, that a Receiver be appointed. The prayer was for judgment on the debts and for the appointment of a Receiver. (R., p. 11.)

By several orders thereafter entered the Receiver was authorized and directed to continue the business, complete unfinished contracts, buy new material for that purpose, etc. Under these orders the Receiver acted and incurred many liabilities and obligations as Receiver. (R. p. 16-24.)

A statute of Indiana provides as follows:

> "A Receiver may be appointed by the Court, or a judge thereof, in vacation in the following cases:
>
> . . . . . .
>
> "Fifth. When a corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights."
>
> (Burns' Indiana Statute, Sec. 1236 and Sub-Sec. 5.)

In this condition of affairs, while the Receiver was engaged in operating the plant under the orders of the State Court, on the 6th of February, 1903, the Inland Steel Company, a creditor of M. Zier & Co., who had theretofore appeared in the suit in the State Court and participated in the proceedings there, together with two other creditors, filed their

petition in involuntary bankruptcy in the United States District Court for the District of Indiana (hereinafter called the United States Court) against M. Zier & Co. No one was made a party defendant to the petition in the bankruptcy proceedings, except the alleged bankrupt debtor, M. Zier & Co., but the petition itself alleged that the property of the debtor *was in the hands of a Receiver appointed by a State Court*, without alleging in what proceedings or by what Court the Receiver was appointed (R., pp. 66-68), but the Receiver of the State Court was not made a party.

Afterwards, on the 11th of February, 1903, one of the petitioning creditors, the Inland Steel Company, filed its petition in the bankruptcy proceedings, showing specifically to the Court that the property of the debtor was in the hands of the New Albany Trust Company as Receiver of the State Court, appointed as such in the action of Joseph T. Ryerson & Son against M. Zier & Co. then pending in that Court. This petition contained the following further statement:

> "That said Receiver is now running the business of M. Zier & Co. and is completing certain contracts, and for that purpose has employed a large number of men in the manufacturing establishment of said M. Zier & Company, and has placed in charge of said plant one Michael Zier, who is the president and treasurer of said alleged bankrupt. That said Michael Zier is wholly incompetent for said business; that he is wholly unfamiliar with bookkeeping and necessary office work which is essential to the safe conduct of said business; and your petitioner avers that if said Receiver is permitted to remain in charge, that it will result to the injury and detriment of such of the creditors of said M. Zier & Co. who are entitled to participate in said bankrupt estate.
>
> "Your petitioner further states that W. W. & J. R. Watts, attorneys at Louisville, Ky., are the attorneys for said Joseph T. Ryerson & Son in said proceedings wherein

said New Albany Trust Company was appointed Receiver and that said W. W. & J. R. Watts are also attorneys for said Receiver, and your petitioner fears that said Receiver is friendly to said Joseph T. Ryerson & Son and said alleged bankrupt, to the detriment of the creditors at large of said alleged bankrupt."

The petition prayed the appointment of a Receiver in the bankruptcy proceedings. (R., pp. 71-73.)

Upon that petition, on the day on which it was filed, February 11, 1903, the United States Court made an order in the bankruptcy proceedings, appointing Frederic D. Connor Receiver of the property of the alleged bankrupt, M. Zier & Co. The order appointing the receiver in the bankruptcy proceedings contained, among other things, the following:

"Said Receiver is ordered and directed to take into his possession the sheet iron and boiler manufacturing plant in said City of New Albany, together with all tools, machinery, appliances, materials and finished property within and about the plant in said City of New Albany, which said plant is located at the corner of Pearl and Oak Streets in the City of New Albany, and all other property of said M. Zier & Co., wheresoever found and situated. It is further ordered and adjudged by the Court that the New Albany Trust Company be and it is hereby required to deliver up to said Frederic D. Connor as Receiver all the said property and effects of said M. Zier & Co., now in its possession and to refrain hereafter from interfering in any way with the said Receiver's possession and control of the same." (R., p. 74.)

The Receiver thus appointed in the bankruptcy proceedings duly qualified as Receiver under the order of appointment and on the 13th of February, 1903, appeared at New Albany and demanded of the New Albany Trust Company,

Receiver of the State Court, that the latter deliver to him all the assets and effects of said M. Zier & Co. in its hands. On the next day, February 14th, the Receiver in the bankruptcy proceedings, by his attorney, filed in the action pending in the State Court, his petition showing his appointment as Receiver by the United States Court in the bankruptcy proceedings, and praying the State Court to enter an order requiring the New Albany Trust Company as Receiver to turn over and surrender to him as Receiver in bankruptcy the property of M. Zier & Co., which the New Albany Trust Company as Receiver held in its possession. This was the last day of the then term of the State Court, the next term whereof began on the 9th of March following. No action was taken on the petition of the Receiver appointed in the bankruptcy proceedings, and an order was entered continuing the petition until the next term of the State Court. The petition of the Receiver appointed in the bankruptcy proceedings, which was filed in the State Court, made a general appearance in that Court without any reservations whatever. (R., p. 173.)

Notwithstanding the fact that the Receiver in the bankruptcy proceedings filed his petition in the suit in the State Court, he did not await any determination upon that petition but pressed his demand upon the Receiver of the State Court for the delivery by it to him of the property which it held as Receiver of the State Court. The order appointing the Receiver in the bankruptcy proceedings commanded him to take possession of the property from the State Court's Receiver and ordered the latter to deliver the possession of the property to the Receiver in the bankruptcy proceedings. (R., p. 74.) This anomalous situation led the Receiver of of the State Court and its attorney, William W. Watts, to the conclusion that the peremptory order made in the bank-

ruptcy proceedings commanding the Receiver there appointed to take the property from the possession of the Receiver of the State Court was improvidently made by the Bankrupt Court, and that the Bankrupt Court would, upon suggestion, rescind so much of its order as made such requirement. So believing, William W. Watts, attorney for the Receiver in the State Court, telephoned to the Judge of the United States Court at Indianapolis, and requested him to direct the Receiver in the bankruptcy proceedings not to proceed further with his demand until he and the New Albany Trust Company could have an opportunity to explain to the Court the exact circumstances and conditions of the action of Joseph T. Ryerson & Son against M. Zier & Co. pending in the State Court.

The Judge of the United States Court stated in reply by telephone that a hearing of the matters might be had at Indianapolis on February 16th; whereupon the New Albany Trust Company, Receiver, filed its petition in the State Court, in which it stated that the United States Court had appointed a Receiver in bankruptcy proceedings and that the Receiver so appointed was demanding the possession of the property in its hands as Receiver of the State Court, and that in the opinion of the Receiver and its attorney the order of the United States Court commanding its Receiver to take possession of the property peremptorily was improvidently made, and further, that the State Court Receiver and its attorney believed that the United States Court, upon suggestion of all the facts, would rescind its peremptory order, and the petition prayed the advice of the Court in the premises. (R., pp. 41-49.) Upon that petition the State Court on the same day made an order authorizing its Receiver and its attorney, William W. Watts, to go to Indianapolis and without entering their appearance, and by protestation against

appearance except only for the purpose of making the explanation, state to the United States Court the condition of the record in the State Court. (R., pp. 50-53.) Accordingly, Henry E. Jewett, Vice-President of the New Albany Trust Company, Receiver, and William W. Watts, its attorney, appeared before the United States Court at Indianapolis on the 16th day of February and exhibited to that Court the order of the State Court authorizing them to appear and make a statement and argument. The discussion before the United States Judge was protracted until February 17th when, finally, the Judge of that Court peremptorily demanded of Henry E. Jewett as the representative of the New Albany Trust Company, Receiver, to know whether or not he would turn over the property in the hands of the New Albany Trust Company, Receiver, to Frederic D. Conner, Receiver, and stated that he did not wish to go down to New Albany with a club, but if it were necessary to go with a club, he would do so; whereupon Jewett answered that he would turn over the property. The same demand was made by the Judge of the United States Court of William W. Watts as the attorney for the New Albany Trust Company, Receiver, and he, under like circumstances, answered that he would advise the New Albany Trust Company, Receiver, to turn the property over to the Receiver appointed by the United States Court.

Watts and Jewett left Indianapolis on the afternoon of February 17th, the former going to Louisville, Ky., and the latter to New Albany, Ind.

The situation was an embarrassing one to William W. Watts as well as to Henry E. Jewett, the representative of the New Albany Trust Company. They knew that they had no authority to make the agreement to turn over the property because they had not been authorized to do so

by the State Court. Watts so keenly felt the situation in which he was put that on the following day, February 18th, in the afternoon, he asked Mr. David A. Sachs, who is a lawyer and his friend, to go to New Albany with him for the purpose of aiding him in undertaking to explain to the Judge of the State Court what had happened at Indianapolis, and as far as possible to justify Watts and persuade the Judge of the State Court to make an order ratifying what had been done. They did go to New Albany together and made an oral statement to the Judge of the State Court. The Judge declined to approve what had been done and they returned to Louisville. On the following morning Mr. Watts and Mr. Sachs returned to New Albany and Mr. Watts filed before the Judge a formal written statement or petition stating what been had done at Indianapolis, and asking leave of the Court to expunge from the record the order made on the 14th of February authorizing the New Albany Trust Company, Receiver, and its attorney to go to Indianapolis, and also to withdraw from the files the petition upon which that order was based. (R., p. 55.) This was done in view of the fact that the Judge of the United States Court was for some reason very much offended because of that order and petition. So far from making the order requested the Judge of the State Court at once entered an order requiring Watts to show cause, if any he could, why he should not be held in contempt of Court. (R., p. 55.)

On the same day, February 19, 1903, the New Albany Trust Company, Receiver, filed in the State Court its petition signed by Henry E. Jewett, Vice-President, stating what had occurred at Indianapolis, and asking leave of the Court to turn the property, in its hands, over to the Receiver appointed by the United States Court in the bankruptcy proceedings. (R., p. 56.) So far from granting the author-

ity asked, the Judge of the State Court made an order citing the New Albany Trust Company to show cause why it should not be punished for contempt of Court. (R., p. 57.)

In the meantime the Receiver of the United States Court was pressing his demand upon the State Court Receiver for a delivery of the property to him, and, on the evening before, the New Albany Trust Company wrote him a letter stating that it had filed its petition in the State Court asking leave of that Court to turn over the property; and that the Judge had stated orally that he wanted the Receiver of the State Court to hold the property until its accounts were rendered and passed upon; the letter suggested further that this might be accomplished on the next day, February 20th, and asked the Receiver of the United States Court to await until that time as it would relieve the receiver appointed by the State Court from much embarrassment; but stated further that if the Receiver appointed by the United States Court would not await until the next day that the New Albany Trust Company, as Receiver, would turn the property over *without any action at all of the State Court*, because it had stated to the Judge of the United States Court that it would do so. (R., p. 33.) The Receiver of the United States Court expressed his unwillingness to delay the delivery of the property, whereupon the property was turned over to him by the New Albany Trust Company, *in disregard of the order of the State Court.* The Judge of the State Court requested all of the attorneys in the case to appear at New Albany before him on the following morning, February 20th.

In deference to this request Watts and Sachs went to New Albany on the morning of February 20th. During that day the Judge made an order removing the New Albany Trust Company as Receiver, and appointing in its stead Charles D. Kelso as Receiver, and ordering him as Receiver

to demand of the New Albany Trust Company and of Frederick D. Connor the possession of the property of M. Zier & Co., and ordering him further to report back to the Court whether or not the demand had been complied with. (R., pp. 59-61.) Late in the afternoon of that day Charles D. Kelso, Receiver, reported to the Judge of the State Court that his demand for the property had been refused; (R., p. 62) whereupon the Judge of the State Court made an order directing the issuance of a writ to the Sheriff of Floyd County commanding him to take possession of the property from Frederick D. Connor and deliver it to Charles D. Kelso, Receiver. (R., p. 63.) That writ was placed in the hands of the Sheriff and executed that evening without any force or violence, and the property was thus placed in the hands of Charles D. Kelso, Receiver of the State Court.

On the 21st day of February, 1903, Frederick D. Connor, who was the Receiver appointed in the bankruptcy proceedings, filed his petition and affidavit in those proceedings in the United States Court (R., p. 78) and upon that affidavit the Court made an order citing Charles D. Kelso, the Sheriff of Floyd County, his two deputies, the watchman placed in charge of the property by Kelso, Receiver, and William W. Watts and D. A. Sachs to appear before him on a certain day to show cause, if any they could, why they should not be held in contempt of that Court for a violation of its orders. (R., p. 92.)

On the same day the United States District Attorney filed an information based upon the same affidavit, charging all these parties with the offense of contempt of the United States District Court, in violating its orders made in the bankruptcy proceedings, in taking the property from the hands of its Receiver, and in withholding it from his possession. The rule and information were tried as to Kelso, the

Sheriff and his deputies, and the watchman placed in charge of the property by Kelso, Receiver, and they were found guilty of contempt, and Kelso was ordered to be confined in the Marion County, Indiana, jail for a period of sixty days, and the others for various periods less than that. (R., p. 92.)

The information and rule were set for trial as to William W. Watts and D. A. Sachs at Indianapolis on the 9th day of March, 1903. They then appeared and the Court required them to respond and plead to the rule and information conjointly. They filed separate responses and pleas.

The response of William W. Watts was in substance as follows:

(1.) That he is not guilty.

(2.) Denying that he committed any act, or advised or consented to the commission of any act, in disobedience of any order of the Court, and denying that he in any way, either directly or by aiding, abetting or advising, forcibly or in any other way, took the property from Frederic D. Connor, Receiver, or withheld the custody of the property from him; yet that the orders of the District Court, insofar as they directed the Receiver of the United States District Court to take the property peremptorily from the hands of the Receiver of the State Court, were void and beyond the power of the Court to make, and that the possession which the Receiver of the United States District Court acquired in the manner in which it was acquired was a wrongful and unlawful possession, and that the retaking of said property in the manner in which it was retaken was a lawful taking.

(3.) All of the record facts were stated in full, both in the action in the State Court and in the bankruptcy proceedings, and further, the respondent stated that he had nothing whatever to do with the making of the order removing the New Albany Trust Company as Receiver and

appointing Charles D. Kelso as Receiver, or with the order directing the issuance of a writ to retake the property, and did not know that such a writ had been ordered until the day after it had been ordered, nor did he know of the taking of the property thereunder until the next day. (R., p. 93.)

Upon the filing of this response the respondent insisted that it should be taken as sufficient, but the Court ruled otherwise, and the trial proceeded (R., p. 171); the United States District Attorney introduced evidence and the defendant introduced evidence, and, after argument of counsel, the Court adjudged the respondent, William W. Watts, guilty of contempt, and ordered that he be confined in the Marion County jail at Indianapolis, Indiana, for a period of sixty days (R., pp. 131-132).

On March 20, 1903, the petitioner asked leave to file in this Court his petition for a writ of habeas corpus and a writ of certiorari and he further moved the Court to be admitted to bail pending the determination of the matters set out in his petition. On March 23, 1903, leave was granted by this Court to file the petition, both the writ of habeas corpus and the writ of certiorari were ordered to issue, returnable April 6th, and it was further ordered that the petitioner be released on his own recognizance. The proceedings are now here for final determination.

The contempt of which the petitioner was adjudged guilty did not consist in any overt act, for it was not pretended that he was present when the Sheriff and his deputies executed the writ issued by the State Court commanding the Sheriff to restore the possession of the property to the Receiver of the State Court, or that he actually aided the Sheriff in executing the writ in any way. The finding of the Court was, and in this the contempt consisted, that the petitioner, as a lawyer, advised, or that he procured David

A. Sachs, another lawyer, to advise that the United States Court did not have jurisdiction to order the property to be taken peremptorily out of the hands of the Receiver of the State Court, and that the possession of Frederic D. Connor, acquired as it was acquired, was a wrongful possession, and that the State Court might lawfully issue a writ commanding the restoration of the possession of the property to its receiver.

We apprehend that this Court, upon this proceeding, can not be concerned about the evidence which was heard upon the trial in the Court below; nevertheless, it is important, perhaps, for the Court to be informed of the precise ground upon which the District Judge determined the petitioner to be guilty of the contempt charged. The District Judge rendered an elaborate opinion, setting out in detail his conclusions of law and of fact. That opinion is in the record and it begins on page 132.

The conclusion of law reached by the District Judge was that the United States Court had plenary power to take summarily from the Receiver of the State Court the property which it held as such. This conclusion is thus stated by the District Judge in the opinion rendered:

> "So the authorities are, I think, plain that when this Court appointed Mr. Connor as Receiver, it had the power to arm that Receiver with sufficient power to take that property from the Receiver of the State Court. If that is not the law, then a number of judges, including some of the best in the country, have been badly mistaken." (R., pp. 157-8.)

The question of fact which the District Judge was called upon to determine on the trial below was thus stated in the opinion rendered by him:

> "This court has no doubt whatever that Kelso, and those with him, who went down on that Friday night

and took possession of this property were guilty of a flagrant, a gross contempt of this court. And they have been punished therefor.

"The question now before this Court is, whether or not these defendants, or either of them, had such connection with that transaction as to make them guilty also?" (R., p. 163.)

Having thus stated the question of fact to be determined, the District Judge, in the opinion rendered, proceeds to consider the evidence upon which he reached the conclusion that the petitioner was guilty of contempt. He said:

"It is claimed for Mr. Watts that he went to New Albany and did everything he could to turn this property over to the receiver of this Court. The evidence shows that Watts was continually declaring and protesting that this property should be turned over. Counsel for Mr. Watts, in the argument in his behalf yesterday afternoon, spoke of the responsibility which this court has, and the power which it has. I trust I fully realize the responsibility which is imposed upon me in this case; I know I take no pleasure in exercising the powers which are incident to my present position. Counsel in that same connection said that Mr. Watts, according to the evidence, had not done one thing or said one word, that no witness had testified to his having done one thing or said one word in furtherance of this wrongful enterprise.

"Until Mr. Watts returned to Louisville and procured his friend Sachs to go to New Albany, Mr. Sachs was a stranger to that proceeding. Mr. Watts undoubtedly got Mr. Sachs into the proceeding. He was over there Wednesday. The evidence in the case shows that when Judge Utz finally decided, at whose instance I know not, to cite the New Albany Trust Company before him for contempt, that Mr. Watts respectfully requested that he be cited also. It is in evidence before this Court that before Mr. Watts was served with the citation to appear and answer the charge of contempt in the Floyd Circuit Court, he informed the gentlemen that he was going to

a restaurant or saloon, I have forgotten which, where he would be, and to send the Sheriff there to serve him. He was in New Albany, during all the time that these proceedings were planned and he returned to Louisville with Mr. Sachs late in the evining of Friday, only a short time before the final proceedings were taken to throw the Receiver of this Court out of the possession of that property.

"I understand these gentlemen, in order to be punished must be found guilty beyond a reasonable doubt, but I do not understand that this Court is bound by the denials of Mr. Watts. If the circumstances surrounding this transaction clearly established to this Court's mind beyond a reasonable doubt that notwithstanding Mr. Watts' protestations and declaration as to his intention and desires—that notwithstanding that, if through Mr. Sachs or by assisting Mr. Sachs he had anything whatever to do with the transactions which culminated in this unlawful act, he is guilty and this Court must find it, if the evidence shows it. Mr. Watts, his counsel asks this Court to believe, throughout those four days, when the evidence in this case shows that he was associating with Judge Utz socially, drinking with him in saloons, hobnobbing with him, in the language of the street, during those four days, was there with his friend Sachs for no other purpose than to appease the wrath of Judge Utz against Watts. It is needless for me to say that this Court does not believe one word of it—not one one word of it. I can not believe it. The only solution of his conduct that can be reached consistently with the evidence is this; according to his own testimony, the nearer he got to Louisville, the more he concluded that he had made a mistake in offering to turn the property over. But he had offered. Mr. Watts is one of those lawyers who prides himself on keeping his agreements made in Court. I have known many such. Therefore, he did not wish to put himself in the position of openly violating the voluntary promise he had made in this Court. So he procured his friend Sachs to go with him to New Albany and Sachs is put forward as the active manager of this thing and Watts remains in the background and continually protests that he wants to turn this property

over and keep his agreement with the United States Court. He is like some other people. He protests too much. So I have come to the conclusion that Mr. Watts is guilty of a flagrant contempt of this Court." (R., pp. 167, 168, 169.)

ARGUMENT.

I.

The three following propositions are firmly established by the decisions of this Court: (1) that the judgment of a Court of general jurisdiction punishing a person for criminal contempt, is not subject to review by writ of error or appeal to this Court; (2) that when a Court of the United States adjudges a person in contempt for refusing to comply with an order which that Court had no authority to make, the order itself is void and the order punishing him is likewise void; (3) that when the proceeding for contempt in the latter case results in imprisonment, this Court will, by a writ of habeas corpus, discharge the prisoner.

The following is the first paragraph of the opinion of this Court delivered by Mr. Justice Matthews *In re* Ayers, 123 U. S. 485:

> "It is established by the decision of this Court, that while 'the exercise of the power of punishment for contempt of their orders, by Courts of general jurisdiction, is not subject to review by writ of error, or appeal to this Court,' yet, when 'a Court of the United States undertakes, by its process of contempt, to punish a man for refusing to comply with an order which that Court had no authority to make, the order itself, being

without jurisdiction, is void, and the order punishing him for contempt is equally void;' and that, 'when the proceedings for contempt in such a case results in imprisonment, this Court will, by its writ of habeas corpus. discharge the prisoner.'"

In *Ex parte* Rowland, 104 U. S. 604, Mr. Chief Justice Waite, delivering the opinion of this Court, said:

"The single question we have to consider on this application is, whether the order of the Circuit Court, made on the 21st of November, is sufficient authority to the Marshal for the detention of the persons he holds under it; and that question, as is conceded on both sides, depends entirely on the power of that Court to require the Court of county commissioners to do what its members have been held to be in contempt for not doing. If the command of the peremptory writ of mandamus was in all respects such as the Circuit Court had jurisdiction to make, the proceedings for the contempt are not reviewable here. But if the command was in whole or in part beyond the power of the Court, the writ, or so much as was in excess of the jurisdiction, was void, and the Court had no right in law to punish for any contempt of its unauthorized requirements. Such is the settled rule of decision in this Court."

These rules are supported by an unbroken line of decisions of this Court.

Ex parte Lange, 18 Wall. 163.
Ex parte Rowland, 104 U. S. 604.
Ex parte Fisk, 113 U. S. 713.
In re Ayers, 123 U. S. 443.
In re Lane, 135 U. S. 443.
In re Tyler, 149 U. S. 164.
In re Bonner, 151 U. S. 242.
In re McKenzie, 180 U. S. 536.

In such cases the writ of certiorari will also be allowed by this Court in aid of the writ of habeas corpus and for the purpose of enlarging the scope of the latter writ.

Ex parte Lange, 18 Wall. 163.

In re Chetwood, 165 U. S. 443.

U. S. Revised Statutes, Sec. 716.

The final decision of the case at bar, therefore, rests upon the answers to be made to these questions:

1. Was the order of the United States Court, commanding its Receiver to take peremptorily from the possession of the State Court Receiver the property which was in its hands as Receiver, void or in excess of the power of the United States Court?

2. Was the possession of the property by Frederic D. Connor, who was the Receiver in bankruptcy, acquired in the manner stated, a lawful possession?

3. Did the State Court have the right and authority to issue a summary writ, commanding the taking of the property from the possession of Frederic D. Connor and restoring it to the State Court's Receiver?

II.

1. Was the order of the United States Court, commanding its Receiver to take peremptorily from the possession of the State Court Receiver the property which was in its hands as Receiver, void or in excess of the power of the United States Court?

This Court has over and over again held the proposition to be universal that where one Court has acquired jurisdiction over property, another Court may not interfere summarily with that possession.

This rule is stated as follows by Mr. Justice Matthews, in Covell vs. Heyman, 111 U. S. 182:

> "The forbearance which Courts of co-ordinate jurisdiction administered under a single system, exercise toward each other, whereby conflicts are avoided by avoiding interference with the process of each other, is a principle of comity, with perhaps, no higher sanction than the utility which comes from concord; but between State Courts and those of the United States, it is something more. It is a principle of right and law, and, therefore, of necessity. It leaves nothing to discretion or mere convenience. These Courts do not belong to the same system, so far as their jurisdiction is concurrent; and although they co-exist in the same space, they are independent and have no common superior. They exercise jurisdiction, it is true, within the same territory, but not in the same plane; and when one takes into its jurisdiction a specific thing, that *res* is as much withdrawn from the judicial power of the other as if it had been carried physically into a different territorial sovereignty. To attempt to seize it by a foreign process is futile and void."

In the case of Shields vs. Coleman, 157 U. S. 168, the Circuit Court of the United States had originally taken property into its possession by the appointment of a receiver and thereafter accepted a bond in lieu of the property and discharged its receiver. After this was done the State Court, upon the petition of certain creditors, appointed a receiver who took possession of the property, and the Circuit Court of the United States reappointed its Receiver and took the property from the Receiver of the State Court. In reversing the judgment of the lower Court this Court, speaking through Mr. Justice Brewer, said:

> "Had the Circuit Court of the United States, when this property was in the possession of the Receiver

appointed by the State Court, the power to appoint another Receiver and take the property out of the former's hands? We are of the opinion that it had not."

It has been supposed in some quarters—and this was the view of the District Judge—that this rule of comity which is necessarily universal in its application, is abrogated or does not exist where the conflict is between a Court of Bankruptcy and a State Court. This contention finds no support in any utterance of this Court, but quite upon the contrary this Court has held under every act of Congress providing a uniform system of bankruptcy that the rule is applicable in all its vigor to Bankrupt Courts.

In Peck, et al, vs. Jenness, et al, 7 How. 611, it was held that this doctrine of comity applied with equal force as between the Bankrupt Courts of the United States on the one hand and the State Courts on the other under the Bankrupt Act of 1841. There this Court, through Mr. Justice Grier, said:

> "It is a doctrine of law too long established to require a citation of authorities, that, where a Court has jurisdiction, it has a right to decide every question which occurs in the cause, and whether its decisions be correct or otherwise, its judgment till reversed, is regarded as binding in every other Court; and that where the jurisdiction of a Court, and the right of a plaintiff to prosecute his suit in it, have once attached, that right can not be arrested or taken away by proceedings in another Court. These rules have their foundation not merely in comity, but on necessity. For if one may enjoin, the other may retort by injunction, and thus the parties be without remedy; being liable to a process for contempt in one if they dare to proceed in the other. Neither can one take property from the custody of the other by replevin or any other process, for this would produce a conflict extremely embarrassing to the administration of justice."

In Eyster vs. Gaff, et al., 1 Otto, 521, which was a case arising under the Bankrupt Act of 1687, this Court, in an opinion by Mr. Justice Miller, said:

> "It is a mistake to suppose that the Bankrupt Law avoids of its own force all judicial proceedings in the State or other Courts the instant one of the parties is adjudged a bankrupt. There is nothing in the act which sanctions such a proposition."

And again in the same opinion this Court says:

> "The opinion seems to have been quite prevalent in many quarters at one time, that, the moment a man is declared bankrupt, the District Court which has so adjudged, draws to itself by that act not only all control of the bankrupt's property and credits, but that no one can litigate with the assignee contested rights in any other Court, except in so far as the Circuit Courts have concurrent jurisdiction, and that other Courts can proceed no further in suits of which they had at that time full cognizance; and it was a prevalent practice to bring any person, who contested with the assignee any matter growing out of disputed rights of property or of contracts, into the bankrupt court by the service of a rule to show cause and to dispose of their rights in a summary way. This Court has steadily set its face against this view."
>
> Marshall vs. Knox, 16 Wall. 551.
> Doe vs. Childress, 21 Wall. 643.

Mr. Justice Miller, sitting on circuit, in the case of Johnson, Assignee, vs. Bishop, Sheriff, Woolworth, 324, delivered an instructive opinion, holding the same proposition under the Bankrupt Law of 1867.

The very recent case of Metcalf vs. Barker, decided by this Court, December 1, 1902, 23 Supreme Court Reporter, 69, distinctly holds that this general doctrine of comity is

applicable in all its vigor to the Bankrupt Courts of the United States under the present Bankrupt Law. This Court there refers to and approves the cases of Peck vs. Jenness, 7 How. 612; Doe vs. Childress, 21 Wall. 642; Eyster vs. Gaff, 1 Otto, 521, and affirms the application of the doctrine of those cases to Bankrupt Courts to-day.

Dever Pickens vs. Susan C. Dent Roy, et al, 23 Supreme Court Reporter, 78.

It was also supposed at one time that where a Federal Court is exercising its exclusive admiralty jurisdiction that such jurisdiction, when invoked, supersedes and annuls the jurisdiction of the *res* theretofore acquired by a State Court, and that the general doctrine of comity did not exist in such case. This proposition was denied by this Court in the case of Taylor, et al., vs. Carryl, 20 How. 583. Mr. Justice Campbell, delivering the opinion of this Court, there said:

> "But it is in this Court that the principle stated in Payne vs. Drew has received its clearest illustration, and been employed most frequently, and with most benignant results. It forms a recognized portion of the duty of this Court to give preference to such principles and methods of procedure as shall serve to conciliate the distinct and independent tribunals of the States of the Union, so that they may co-operate as harmonious members of a judicial system coextensive with the United States, and submitting to the paramount authority of the same Constitution, laws and Federal obligations; the decisions of this Court that disclose such an aim, and that embody the principles and modes of administration to accomplish it, have gone from the Court with authority, and have returned to it, bringing the vigor and strength that is always imparted to magistrates, of whatever class, by the approbation and confidence of those submitted to their government."

2. In the case at bar the State Court was a Court of general jurisdiction and had full power under the laws of the

State of Indiana to appoint a Receiver. This power it exercised and appointed a Receiver who, after qualifying under the law, took the property of M. Zier & Company into its possession under the orders of the State Court. The State Court authorized its Receiver to continue the business for the purpose of completing certain unfinished contracts which the defendant in the suit had made before the appointment of the Receiver. The Receiver was authorized to and did purchase new materials for this purpose, and contracted debts upon the faith of the property in its hands as Receiver, and to all of which such property must respond. If the doctrine of comity were thrown away and the Receiver of the State Court put upon the plane of a mere voluntary assignee, his possession was an *adverse* possession which could not be disturbed by mere summary process. It would be monstrous to hold that the Bankrupt Court in this condition of affairs had the right summarily to take the property out of the possession of the State Court and leave the rights of the many parties, including the creditors of the Receiver, which had attached in the State Court proceeding to be settled as best they could. We contend that the attitude of a mere voluntary assignee bears no likeness to the attitude of a receiver appointed by a State Court of general jurisdiction, for in the one case the property is not *in custodia legis*, while in the other case it is; yet, if by any possibility the rules applicable to the one can be applied to the other, still the possession of the Receiver of the State Court in the case at bar was such as that summary process against him to wrest the property from his possession could not be issued by the District Court, because it held the property adversely.

Louisville Trust Co. vs. Comingor, 184 U. S. 18.

Shields vs. Coleman, 157 U. S. 168.

This Court has held that the Bankrupt Courts under the present Bankrupt Law not only can not issue summary process to recover property held adversely, but that neither the Bankrupt Courts nor the Circuit Courts of the United States have jurisdiction in plenary suits for that purpose except they be brought in the Federal Court by consent of the party sued.

Bardes vs. Hawarden Bank, 178 U. S. 524.

Moreover, at the time the United States Court made its summary orders there had been no adjudication that the debtor is a bankrupt, and *non constat* that he ever would be adjudged a bankrupt.

3. But the question here is not one of the *right* of possession. It is a question of proper procedure. The *necessity* out of which the rule of comity arises exists in the case where the Bankrupt Court has in fact the ultimate right of possession as well as in the case where the State Court has the ultimate right of possession. The real question is not at all which Court has the *right* of possession, but whether the Court which has the *actual* possession shall be disturbed in that possession by a summary process from another Court which claims that it has the right of possession. This being true, as we understand the rule, it is useless to argue how far the proceedings in bankruptcy annul assignments made under State laws of receiverships in State Courts based upon insolvency of the defendant debtor. All these questions are aside from the question at bar. The question here is one merely of orderly procedure. In the language of the opinion of this Court in Covel vs. Heyman, 111 U. S. 182, when a Federal Court or a State Court takes into its jurisdiction a specific thing:

> "That *res* is as much withdrawn from the judicial power of the other as if it had been carried physically into a

different territorial sovereignty. To attempt to seize it by a foreign process is futile and void."

And it matters not whether the Federal Court is sitting in bankruptcy, or exercising its ordinary jurisdiction, the rule is the same, and this is so of necessity. The Court claiming the possession of the property which is actually in the possession of the other Court, must, by its properly appointed officer, go to the Court having the possession and there present the claim and have it adjudged. It is to be presumed, absolutely, that the judgment will be right, but whether right or wrong the remedy is by appeal from that judgment.

In Doe vs. Childress, 21 Wall. 643, this Court approvingly quotes the following from the case of Kent vs. Downing, 44 Ga. 116:

> "The assignee may on his own motion be made a party, if for no other reason than to have it properly made known to the Court that the defendant has become bankrupt. He has also a right to move to dismiss the attachment. The adjudication of bankruptcy must be made known to the Court in some authentic mode. It may be denied, and the State Court can not take notice of the judgment of other Courts by intuition. They must be brought to the notice of the Court, and this can not be done without parties."

In the case at bar the orderly procedure would have been to have the Receiver appointed in the Bankrupt Court present his claim to the State Court and there have his claim determined. If in his favor, very well; but if against him, he should appeal to the Supreme Court of the State, and if there still the judgment were against him, he should resort to a writ of error to bring the question to this Court for final decision. This would have been the orderly procedure.

This is the only tolerable procedure, and the only one which this Court can possibly sanction. Any other course means riot. Courts are constituted to prevent riotous conflicts and not to engage in them.

The Receiver of the United States Court in the case at bar did actually present his petition in the State Court, praying that the property in the hands of the Receiver of the latter Court be turned over to him. He appeared generally for the purpose of having his rights determined in the State Court. This petition was filed on the last day of the term of the State Court. The Court could not or did not determine it instantly, and the petition was continued until the next term of the Court, which began in about three weeks. This petition was filed on the 14th day of February, 1903. On the 17th day of February, 1903, the Judge of the United States Court entered another order again commanding the Receiver of the United States Court to take the property. The language of that order is as follows:

> "It is now hereby ordered by the Court that said Connor, Receiver as aforesaid, forthwith present a certified copy of the order for his appointment as such Receiver to the said New Albany Trust Company, and immediately thereupon take full possession and control of the property and assets of said M. Zier & Company that are now in the possession or under the control of said New Albany Trust Company as Receiver of the Floyd Circuit Court." (R., p. 78.)

Under this order the Receiver of the United States Court pressed his demands until the State Court Receiver, without any authority from the Court appointing him, and in direct opposition to the Judge of the State Court, delivered the property to him; but this was not done until after the State Court Receiver had been told by the Judge of the

United States Court that he did not wish to come to New Albany with a club but that he would do so if necessary.

We submit that the orders of the United States Court commanding the Receiver of that Court to take summarily the possession of the property in the hands of the Receiver of the State Court are utterly void.

III.

Was the possession of the property by Frederic D. Connor, who was the Receiver in bankruptcy, acquired in the manner stated, a lawful possession?

It is claimed that the property was voluntarily turned over by the Receiver of the State Court to the Receiver in the bankruptcy proceedings. The Receiver in the State Court was not a party to the bankruptcy proceedings. He had nowhere appeared in those proceedings by any pleading of any kind; yet the order entered in the bankruptcy proceedings as of date February 17, 1903, contains the following:

> "And said New Albany Trust Company, Receiver as aforesaid, being now present and represented by Henry E. Jewett, its Vice-president, and by William W. Watts, it solicitor, and after argument by counsel, the said New Albany Trust Company as Receiver of the Floyd Circuit Court by its said Vice-president having voluntarilyoffered and agreed by and with the consent and approval of said William W. Watts, its solictior, in open Court to surrender full and immediate possession and control of the property and assets of said M. Zier & Co. in its possession or under its control as Receiver of said Floyd Circuit Court, to said Connor as Receiver of this Court upon the presentation by him to said New Albany Trust Company of a certified copy of the order of his appointment as such Receiver heretofore made by this Court."

That consent, whatever it amounted to, was obtained under the singular circumstances hereinbefore stated. It was not in fact voluntary, but the consent was made following the assertion of the Court that it did not wish to go to New Albany with a club, but that it would do so if necessary. But, however all this may be, the consent amounted to nothing. The appearance was made under an order of the Floyd Circuit Court expressly limiting the power of the Receiver to the making of a statement of the condition of the record of the Floyd Circuit Court. That order directed the Receiver of the State Court not to make a general appearance, but a limited one only for the sole purpose of explaining to the United States District Court the condition of the record in the State Court. After that statement was made the peremptory inquiry was made by the Court of the representative of the Receiver whether he would turn the property over. Feeling that he must do so or suffer the consequences, the Receiver, in violation of the orders of the State Court made the agreement. The agreement amounted to nothing. It was beyond the power of the Receiver to make. The Receiver was the mere custodian, with all its powers and rights confined by the orders of the State Court. Beyond this he had no power. This the United States District Court knew at the time. It is fundamental that a Receiver has no powers aside from those conferred upon him by the orders of the Court by which he was appointed. If a Receiver might give up the property in his possession which he holds for the Court, and as an arm of the Court, without the consent or direction of the Court which appointed him, there would be an end of receiverships. This Court said in Davis vs. Gray, 16 Wall. 217, with respect to the powers of Receivers:

> "A Receiver is appointed upon a principle of justice for the benefit of all concerned. Every kind of property

of such a nature that, if legal, it might be taken in execution, may, if equitable, be put into his possession. Hence the appointment has been said to be an equitable execution. He is virtually a representative of the Court and of all the parties in interest in the litigation wherein he is appointed. He is required to take possession of property as directed, because it is deemed more for the interests of justice that he should do so than that the property should be in the possession of either of the parties in the litigation. He is not appointed for the benefit of either of the parties, but of all concerned. Money or property in his hands is in *custodia legis*. He has only such power and authority as are given him by the Court, and must not exceed the prescribed limits. The Court will not allow him to be sued touching the property in his charge, nor for any malfeasance as to the parties, or others, without its consent; nor will it permit his possession to be disturbed by force, nor violence to be offered to his person while in the discharge of his official duties. In such cases the Court will vindicate its authority, and, if need be, will punish the offender by fine and imprisonment for contempt. The same rules are applied to the possession of a sequestrator. Where the property in the hands of the receiver is claimed by another, the right may be tried by proper issues at law, by a reference to a master or otherwise, as the Court in its discretion may see fit to direct."

We regard it wholly unnecessary to cite authorities to show that the act of the Receiver in agreeing to deliver up the property in his hands was wholly void for want of authority from the Court which appointed him.

The unauthorized agreement of the Receiver of the State Court to give up the property in his hands to the Receiver of the Bankrupt Court, being void for want of authority, it follows that his carrying out the agreement by actually delivering the property was also wrongful. By that act Frederic D. Connor came into the wrongful possession of the property, and the wrong was committed as against

the State Court and with respect of property which was then in the hands of the State Court, in *custodia legis*.

We submit that the possession of the property by Frederic D. Connor, acquired in the manner in which it was acquired, was an unlawful possession.

IV.

Did the State Court have the right and authority to issue a summary writ, commanding the taking of the property from the possession of Frederic D. Connor and restoring it to the State Court's Receiver?

We have shown, as we think, conclusively, that the possession of the property by Frederic D. Connor, who was Receiver of the United States Court, was a wrongful possession. It follows, therefore, we submit, that the State Court had the power and the right, by process issued from that Court directed to its proper officer, to restore the possession of the property to its Receiver. This the State Court did by putting a writ into the hands of the Sheriff of the County, an officer of that Court. The Sheriff peaceably executed the writ and restored the property to the rightful possession of the Court by putting it into the hands of the Court's Receiver as the writ directed the Sheriff to do. That retaking of the property was a lawful taking. Frederic D. Connor was in possession of the property. He could not justify his possession by asserting that he was Receiver of the United States Court, and as such held the property; for, notwithstanding the fact that he was the Receiver of the United States Court, his possession was not a lawful possession under any lawful order, or any lawful proceeding had by him as such receiver. He, therefore, held the property unlawfully and the fact that he was Receiver did not justify the unlawful holding.

As said by this Court in Shields vs. Coleman, 157 U. S. 168:

> "The mere forcible continuance of possession by the Federal Court does not transform that which was in the first instance wrongful into a rightful possession."

This point has been expressly decided by this Court in White vs. Schloerb, 178 U. S. 542. In that case, after an adjudication in bankruptcy, an action of replevin in the State Court was commenced against the bankrupt to recover property in the possession of and claimed by the bankrupt at the time of that adjudication, and in the possession of the Referee in Bankruptcy at the time when the action of replevin was begun. The property, having been taken under the replevin proceedings, it was held by this Court that the District Court of the United States sitting in bankruptcy had jurisdiction by summary proceedings to compel the return of the property seized. In that case, in the opinion rendered, this Court uses this expression:

> "Not going beyond what the decision of the case before us requires, we are of opinion that the Judge of the Court of Bankruptcy was authorized to compel persons, who had forcibly and unlawfully seized and taken out of the judicial custody of that Court property which had lawfully come into its possession as part of the bankrupt property, to restore that property to its custodian, and therefore, our answer to the first question would be: 'The District Court sitting in Bankruptcy had jurisdiction by summary proceedings to compel the return of the property seized.'"

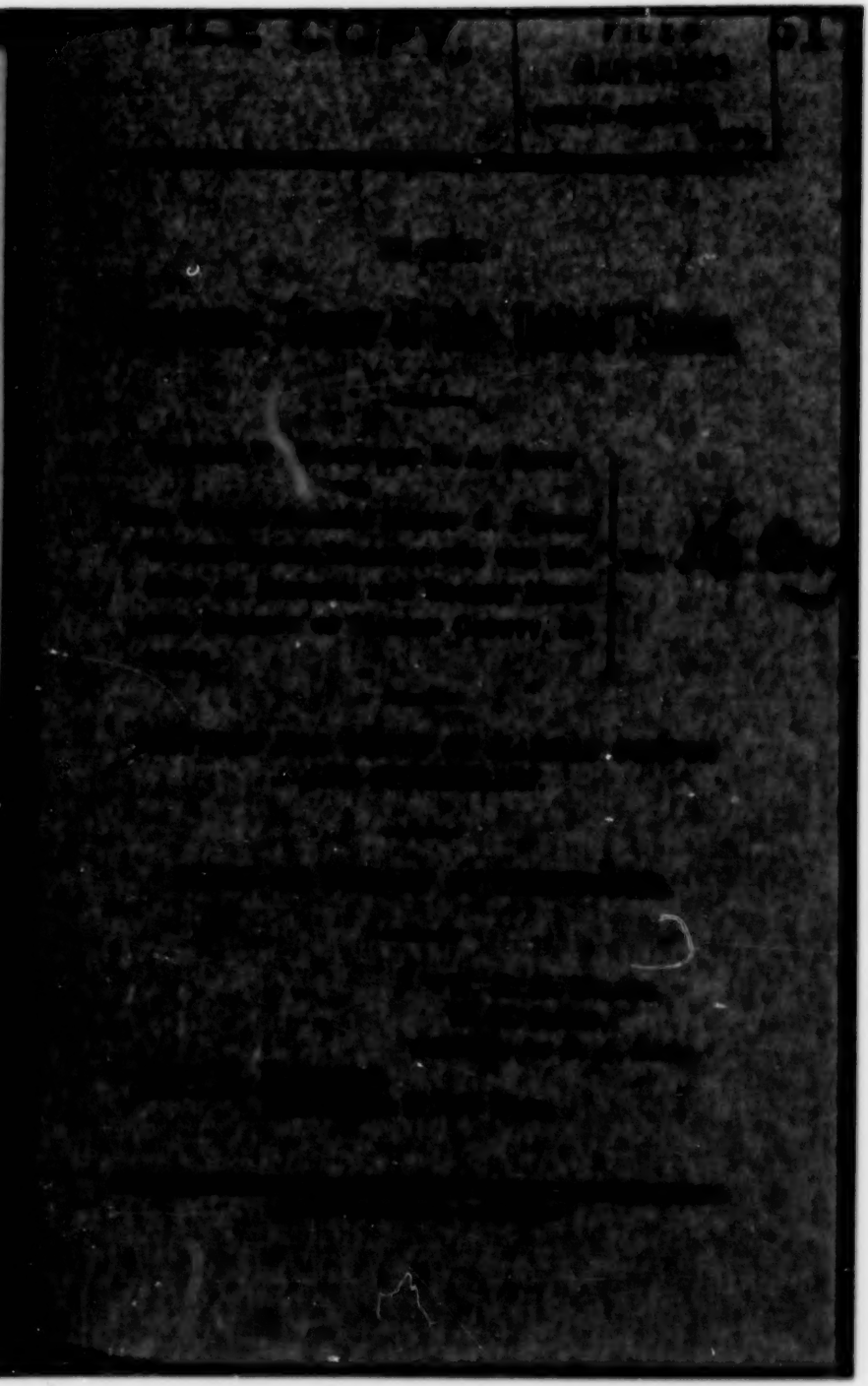
In the very recent case of Metcalf vs. Barker, decided by this Court on December 1, 1902, Mr. Chief Justice Fuller, in delivering the opinion of the Court, referred to the quotation

last above made from the case of White vs. Schloerb, and said:

> "This cautious utterance—and courts must be cautious when dealing with the conflict of jurisdiction—sustains as far as it goes the converse of the proposition when presented by a different state of facts."

We respectfully ask that the petitioner be discharged.

DAVID W. FAIRLEIGH,
BERNARD FLEXNER,
Counsel for Petitioner.



IN THE

Supreme Court of the United States.

WILLIAM W. WATTS AND D. A. HACKS vs. THE UNITED STATES, HENRY C. PUTNEY, UNITED STATES MARSHAL FOR THE DISTRICT OF INDIANA, AND ROBERT METZGER, SHERIFF OF MARION COUNTY, INDIANA.	No. ——.

PETITION FOR WRITS OF HABEAS CORPUS AND CERTIORARI.

BRIEF ON BEHALF OF PETITIONER.

The facts in this case are very fully set forth in the petitions of each of the petitioners, therefore only a very general statement will be made here.

On the 30th day of December, 1902, a complaint was filed in the Floyd Circuit Court of the state of Indiana by *Ryerson & Sons* v. *M. Zorn & Company*, a corporation doing business in New Albany, Indiana. Sum-

mons was duly issued and served, and on the same day an application was made to the judge of the Floyd Circuit Court (the court not being then in session), for the appointment of a receiver to take charge of the assets and business of the defendant corporation. The complaint alleged an indebtedness of $15,000 and more from M. Zier & Co. to the plaintiff, evidenced by promissory notes; also a large indebtedness to other parties; that the defendant was carrying on a large business, manufacturing boilers at said city of New Albany; that it was unable to meet its obligations as they matured; that its creditors were threatening to enter suit against it; that its manufacturing plant was employed in completing unfinished orders under uncompleted contracts; that if suit should be instituted against the defendant and its property seized upon execution or attachments, its property would be dissipated and its plant rendered much less valuable to its creditors than if said property were preserved and continued as a going concern; and that the property, funds and profits of the business were in danger of being lost or destroyed, unless a receiver were immediately appointed to take charge of said property, hold the custody and possession thereof and preserve the same under the order of court.

Thereupon the defendant, M. Zier & Co., appeared to said proceeding, and, on the same day, a receiver was appointed by the judge of the Floyd Circuit Court, he having the statutory power in vacation to make such appointment, such receiver being the New Albany Trust Co., a corporation authorized under the laws of the state to be appointed and to act as such receiver. Immediately upon such appointment it qualified, took possession of the property, made an

necessary of the same, caused the same to be appraised and the appraisement returned into court.

On the 16th of January, 1903, the receiver filed a report and petition, asking the advice of the court as to the conduct of the business; that the creditors be notified by mail, and publication of the time and place for hearing of said report and petition, and that the creditors be requested to appear and be present at the hearing of said petition.

The great majority of all creditors were present at such hearing on the 20th day of January, the hearing being in open court. Upon said hearing it was ordered by the court that the receiver should go on and complete all unfinished contracts; that he might purchase the necessary material for this purpose, but should make no new contracts; and the court further made an order enjoining the creditors from prosecuting any claims or suits against the estate except in that court or with its leave. The court was in session at the time these orders were made on the 16th and 20th days of January, 1903.

The Inland Steel Co., one of the parties who had appeared in the Floyd Circuit Court as above, and two other parties, on February 6, 1903, filed their petition in involuntary bankruptcy in the United States District Court for Indiana, against defendant, alleging the insolvency of the defendant and also alleging the appointment of a receiver in said Floyd Circuit Court. On the 11th day of February the Inland Steel Co. filed a further petition in the bankruptcy court alleging the said receivership and various other facts, as set out in the petition, and asking the court to appoint a receiver in bankruptcy, to take possession of the estate and property. On the same day the court in bankruptcy appointed Frederick D. Gunnoe, such

receiver, and directed him to take into his possession the sheet iron and boiler manufacturing plant and all the property connected therewith in New Albany, and which was then in the possession of the receiver of the said court, and ordered that the New Albany Trust Co. forthwith deliver the same to the receiver of the bankruptcy court and refrain thereafter from in any way interfering with the same. Clauss accepted the appointment and duly qualified thereunder. On the 13th of February he went to New Albany and demanded the possession of the property. Thereupon W. W. Watts, one of the petitioners, an attorney of Louisville, Ky., who had appeared for the plaintiff in said action of Ryerson & Son, and one H. A. Jewett, the vice-president of the New Albany Trust Co., being under the impression that the judge of the United States District Court could not have been advised of all the facts when he made the order for the summary taking possession of the property out of the hands of the receiver of the Floyd Circuit Court, procured from the Floyd Circuit Court an order authorizing them to go to Indianapolis and enter a special and qualified appearance only on behalf of the receiver of said Floyd Circuit Court, and to present the facts to said court in bankruptcy, with a view of avoiding any misunderstanding and preventing any conflict of authority in the premises.

On the 16th day of February, said Watts and said Jewett appeared before the said judge in bankruptcy, exhibited their orders from the Floyd Circuit Court and proceeded to present the facts as they understood them; a discussion arose between the judge and said Jewett and Watts which lasted for several hours during said 16th and 17th, when the judge gave them to understand that his demand for the property was

peremptory, and notified them that "While he did not wish to go to New Albany with a club, he would do so if necessary to obtain possession of the property," and he demanded from them a categorical answer as to whether said Jewett, as vice-president of the trust company, would surrender the property, and whether said Watts, as attorney for the receiver, would advise such surrender; and under the circumstances both answered in the affirmative.

Thereupon returning to New Albany and Louisville, said Watts being apprehensive that the judge of the Floyd Circuit Court would be angry at his making such a promise, procured his friend, D. A. Sachs, a lawyer of more experience than himself in Louisville, and his personal friend, to go with him to New Albany to see said judge, and they went over on the 18th. The details of what transpired on that day are not material to the question here. Suffice it to say the judge was angry, would not consent to give up the property, and, on the 19th, ordered proceedings against said trust company and said Watts for contempt of his court. Said Jewett, on behalf of said trust company did, however, on February 19, 1863, in pursuance of his promise, but against the wishes and order of the judge of the Floyd Circuit Court, turn over the property and plant of said M. Zier & Co., to Frederick P. Connor, receiver of the United States court, who had come again to New Albany armed with an order issued by the court in bankruptcy on the 17th day of February for the seizure of said property.

In the meantime, however, on the 14th day of February, 1863, said Connor, as receiver of the U. S. court, by the authority of that court, had been to New Albany and presented to the Floyd Circuit Court, then in ses-

sion, his petition, reciting his appointment and qualification as receiver and the order to take possession of the property, and, without any qualification as to his appearance, appeared in said suit in said Floyd Circuit Court, and filed said petition asking that the Floyd Circuit Court issue an order turning the property over to him as the receiver appointed by the United States District Court. This order is set out as a part of the petition. The Floyd Circuit Court, on said 11th day of February, the same being the last day of the term of the court, entered an order continuing the hearing of said petition until the next term of court, which would sit about three weeks thereafter. Thereupon the said receiver of the bankruptcy court reported to his court the facts and that he had not obtained possession, such possession being in the receiver of the Floyd Circuit Court, and thereupon the order of the district court of the 17th of February was made as hereinbefore recited. On the 20th day of February the judge of the Floyd Circuit Court made an order removing the New Albany Trust Co. as its receiver and appointed one Kelso in its place. Said Kelso qualified, and thereupon the judge of the Floyd Circuit Court ordered him to demand the property from Conner, and, Conner failing to deliver the same, the judge ordered the sheriff to take possession of the same and turn the same over to said Kelso, receiver, which was done. On behalf of the prosecution it was claimed that these proceedings by the Floyd Circuit Court were encouraged by the petitioners, Sachs and Watts. This they both emphatically denied. The property having been so reclaimed by the receiver of the Floyd Circuit Court, was held for a time by said receiver, though just how long the writer of this brief has not the data to enable him to state.

Upon the resetzure of said property by said Kelso, receiver, the proceedings in attachment for contempt were commenced in the court in bankruptcy against said Kelso, M. Zier, the sheriff of Floyd county, his deputy, two or three persons who acted simply as custodians of the property and said Sachs and Watts. A trial was had, and said Kelso and five or six others, excluding such custodians, were found guilty of contempt and were sent to jail for terms varying from sixty days to a week or ten days. Sachs and Watts not having been served with citation, were not present at that trial, but afterwards came to Indianapolis and entered their appearance and gave bond and their cases were set for hearing on the 9th of March, such hearing taking the entire week, and on Saturday, March 14th inst., they were each found guilty and sentenced to a term of sixty days in the Marion county jail for contempt. They were tried upon an information filed by the United States attorney, based on an affidavit filed by Frederick D. Cramer, receiver, setting forth the facts in relation to the seizure of said property as he understood them, and also on a rule to show cause.

The defendants each presents herewith his petition for a writ of habeas corpus, with a view to being released on bail pending the hearing, for a writ of certiorari, and for a final discharge.

The questions we wish to present are questions of jurisdiction and power on the part of the district court to make the summary orders for the seizure of this property out of the hands of the receiver of the state court, and to punish the petitioners for contempt for disobedience of such order.

It was contended upon the trial on behalf of the government, that, without regard to the question of

the jurisdiction of the bankruptcy court to issue the order in the first instance, his receiver having obtained possession of the property by the delivery of the assets by the New Albany Trust Co., it was a contempt of the bankruptcy court for any persons acting on behalf of the Floyd Circuit Court, or under its authority, in any way to interfere with or retake possession of said property. On behalf of the prisoners, on the contrary, it was insisted, that as the Floyd Circuit Court never consented to such surrender, and its receiver's act was wholly unauthorized and induced only by fears as to the action of the court of bankruptcy, therefore the possession of the bankruptcy court so obtained was no possession in law and might well be disregarded.

Assignment of Errors

The errors relied on are:

First. The United States District Court erred in attempting to take the property out of the hands of the state court by summary proceedings, having no jurisdiction so to do.

Second. The United States District Court erred in accompanying its order the exercise of the state court from dealing with said property, said order being beyond its jurisdiction.

Third. The United States District Court erred in assuming jurisdiction over the custody of said property.

Fourth. The United States District Court erred, its receiver having appeared and filed his petition in the Floyd Circuit Court, asking an order for the custody of said property, in failing to abide the decision of that court.

Fifth. The United States District Court had no jurisdiction to try these petitioners or either of them.

9

I.

Had the court in bankruptcy any authority to summarily seize or order the seizure of this property in the hands of the receiver of the Floyd Circuit Court? As shown by the statement of facts, the action in the said court was *inter partes*. A receiver had been appointed in due form, had taken possession of the property under an order of a court having jurisdiction both of the subject-matter and parties. It is submitted, therefore, that the case was one clearly within the rule so forcibly announced in *Covell v. Heyman*, 111 U. S. 176, on page 182, where speaking of the matter of comity it is said:

"It is a principle of right and of law and therefore of necessity. It leaves nothing to discretion or mere convenience. These courts do not belong to the same system so far as their jurisdiction is concurrent; and although they co-exist in the same space they are independent and have no common superior. They exercise jurisdiction, it is true, within the same territory, but not in the same plane; and when one takes into jurisdiction a specific thing, that res is as much withdrawn from the judicial power of the other as if it had been carried physically into a different territorial sovereignty. To attempt to seize it by a foreign process is futile and void."

That this principle applies in all its vigor as between the state courts and the United States district court sitting in bankruptcy, has been adjudged many times.

In *Peck v. Jenness*, 7 Howard 612, at page 625, it is said:

"It is a doctrine of too long established to require a citation of authorities, that when a court has jurisdiction it has a right to decide every question which occurs in the

cases, and whether its decision is correct or otherwise, its judgment, until reversed, is regarded as binding in every other court; and that, where the jurisdiction of a court and the right of a plaintiff to prosecute his suit in it have once attached, that right can not be arrested or taken away by proceedings in another court. These rules have their foundation not merely in comity but on necessity, for if one may enjoin, the other may retort by injunction, and thus the parties be without right; being liable to a process for contempt in one, if they dare proceed in the other. Neither can one take property from the custody of the other by replevin or any other process, for this would produce a conflict extremely embarrassing to the administration of justice. * * * It follows, therefore, that the district court had no supervisory power over the state court either by injunction or the more summary method pursued in this case, unless it has been conferred by the bankrupt act. But we can not discover any provision in that act which limits the jurisdiction of the state courts, or confers any power on the bankrupt court to supersede their jurisdiction, to annul or vacate the their judgments, or to arrest property from the custody of their officers. On the contrary, it provides that all suits in law or equity then pending in which such a bankrupt is a party, may be prosecuted and defended by such assignee to the final conclusion in the same way and with the same effect as they might have been by such bankrupt. Instead of drawing the decision of the case into the district court, the act sends the assignee in bankruptcy to the state court where the suit is pending and admits its power to decide the cause."

This is equally true of the present bankrupt law.

Subsection b, of Section 11 of the Bankrupt Act, reads as follows:

"The court may order the trustee to enter his appearance and defend any pending suit against the bankrupt."

c reads as follows:

"A trustee may, with the approval of the court, be permitted to prosecute as trustee any suit commenced by the

bankrupt prior to the adjudication with like force and effect as though it had been commenced by him."

In the case at bar, as we have seen, under the order of the court in bankruptcy, the receiver of the bankrupt court actually went into the state court, made himself a party to the proceedings and filed his petition, and then, because the state court did not act upon the same immediately, the bankruptcy court, disregarding the order of the state court, peremptorily ordered the immediate seizure of the property.

The same principles which are announced in the Peck-Jennress case, *supra*, under the bankrupt law of 1841, were again announced by this court in *Eyster v. Gaff*, 91 U. S. 521, under the act of 1867.

Perhaps nowhere are the relative rights and duties of judges of state and federal courts and the absolute necessity of observance of this principle of comity better stated than by Mr. Justice Miller in the case of *Johnson v. Bishop*, 1 Woodworth 324.

The same principles were announced and acted upon in *Marshall v. Vose*, 16 Wall. 551; in *Townsend v. Jemison*, 3 Dillon 370; in *Bradley v. Frost*, 3 Dillon 475, and by this court very recently in *Metcalf Bros. & Co. v. Barker*, 23 Sup. Ct. Rep. page 67.

It was, however, stated by his Honor, Judge Anderson, in the opinion deciding this case, that no case could be found where as between the bankruptcy court and a state court the principle of comity had prevented the bankruptcy court from seizing property, except in cases where the proceeding in the state court was based upon a valid lien. It is respectfully submitted that this contention, if founded in fact, would be without force. The rule does not rest on any question of that kind but on the necessity of each

court respecting the actual possession of the other in order to avoid conflicts. Even when there is a lien the bankruptcy court has the right to the custody of the property, unless in possession of another court.

But we beg to say that in this contention the judge of the district court was in error as matter of fact.

In the case of *Johnson, Assignee*, v. *Bishop*, *supra*, there was an attachment upon mesne process, which however was dissolved by the commencement of the proceedings in bankruptcy. This being so, of course there was no lien. And yet Mr. Justice Miller applies the rule in its widest scope. He says the title to the property was in the assignee, as was also the right of immediate possession. But he says also, "this possession he could recover in a court of justice; but to what court should he apply. Had this property been in the possession of a party who could not shelter himself behind the jurisdiction of a court of law, undoubtedly the federal court would have had jurisdiction of the case." But the property being in the possession of a court of law, it was held that the bankrupt court had no right to attempt to seize it, and the doctrine stated in *Peck* v. *Jenness* was applied, that case being cited.

So in *Bradley* v. *Frost*, 3 Dillon, 457, *supra*, it was held that, as against the sheriff, property which had been levied upon by attachment and sold, and the proceeds paid over to the creditor, the assignee in bankruptcy could not recover for the same, but that he might as against the creditor himself. It is distinctly held in that case that the attachment was dissolved by the bankruptcy proceedings, and that the subsequent sale, therefore, upon execution on the judgment rendered in the attachment proceeding could pass no title.

In re Price, 92 Fed. Rep. 987, is another case where

there was no lien. That was a case of a receivership in a suit between insolvent partners for dissolution. And it was held that the court could not order the receiver to surrender the property to the trustee, but that the latter must apply to the state court to be substituted as plaintiff in the action and to move that court for an entry of a decree in the case, and for an order directing the receiver to transfer the assets to him.

In re Longert, 110 Fed. 927, certain judgments had been rendered, but the proceedings in the state court were not based upon them and no relief was sought touching them. After the judgments were obtained and property was levied upon, the directors of the corporation applied for a voluntary dissolution thereof on the ground of insolvency, and a temporary receiver of the property was appointed by the state court. Two days subsequently involuntary proceedings in bankruptcy were commenced, and a receiver was appointed under the bankrupt act, and he sought to obtain possession of the property from the receiver of the state court. It was held by the bankrupt court that the proceeding in the state court was only incident to the insolvency of the corporation, and that the bankrupt act gives exclusive jurisdiction to the United States courts in such matters and ousts the state courts of all jurisdiction with respect to the possession or distribution of insolvent's assests. But it was said:

"The receiver of this court is therefore entitled to the custody of the property, but, in view of the comity which exists between federal and state courts, and the fact that the receiver is an officer of the state court and acting under its immediate direction, application should be made to it for a proper order in the case.

In re Lesser, 100 Fed. 433, 439."

In re Wells, 114 Fed. 222. The syllabus of that case, second paragraph, reads as follows:

"On the day following the filing of a petition in involuntary bankruptcy against a debtor, and before any action had been taken by the court, a corporation commenced an action in replevin in a state court to recover property of which it claimed to be the owner, but which was in the possession of the bankrupt, and such property was taken under the writ of replevin. Subsequently the court of bankruptcy appointed a receiver, made an adjudication, and appointed a trustee. *Held*, that it did not acquire jurisdiction over the property which had been taken on the writ of replevin, and which was never in its possession, and was not authorized to enjoin the further prosecution of the action in the state court and compel the plaintiff therein to submit its claims to its own jurisdiction."

In that case it seems, that, although the petition in bankruptcy was filed the day before the suit in replevin was commenced, yet no writ was issued or order made thereon. In other words, the court apparently did not deem the actioin in replevin to have precedence, because no order was issued till after action was taken in the state court. In that case also there was no lien.

We call attention also, along the same line, to

In re Ward, 104 Fed. 985;

Smith v. *Belford*, 106 Fed. 658, a decision of the Circuit Court of Appeals of the Sixth Circuit;

Sinsheimer v. *Simonson*, 107 Fed. 898 (Comingore case), same court;

Louisville Trust Co. v. *Comingore*, 184 U. S. 18.

This last case, although involving a question of adverse claim, is in principle in point. Would it be asserted that, if the money paid to the attorney and

to the assignee had been still in the custody of the Jefferson Circuit Court, the decision of this court would have been different? This Comingore case also is instructive, in that it is held that a stranger to bankruptcy proceedings is not to be held bound by those proceedings, unless he has consented to the jurisdiction.

National Bank of Republic v. *Hobbs*, 118 Fed. 626.

This last decision was a controversy between the bankruptcy court and the United States Circuit Court, and it was held that the bankruptcy of the debtor would not supersede a proceeding in the circuit court upon a creditor's bill.

Perhaps no case is more instructive upon this question than the case of *White* v. *Schloerb*, 178 U. S. 542, cited and commented upon by this court in the case of *Metcalf* v. *Barker*, *supra*. There an attempt was made to take property out of the custody of the United States Court sitting in bankruptcy, and it was held that it could not be done, and that where the bankruptcy court had first obtained possession of the property, but the property had been taken out of its hands by writ of replevin, the bankruptcy court had a right to repossess the property by summary proceedings. And why? Because the property had never been rightfully in the possession of the state court, or rightfully out of the possession of the United States Court.

The Chief Justice in the Barker case, speaking of this decision, says:

"This cautious utterance,—and courts must be cautious when dealing with a conflict of jurisdiction—sustains as far as it goes the converse of the proposition when presented by a different state of facts."

Now what is the converse of the proposition. It is that, if the state court has obtained rightful possession, and its possession is wrongfully displaced by the federal court, then the state court has the right by summary proceedings to retake the property, and that was exactly what was done in the case at bar, and exactly what is alleged as the basis for these contempt proceedings. We submit that, if the property being rightfully in the custody of the bankruptcy court and being seized by writ of replevin from the state court, it may be summarily reseized, in the same way and by the same logic and by the express declaration of this court in the Metcalf case, the state court being in lawful possession and being wrongfully dispossessed, as it was in this case, may reseize the property.

II

It seems to us, therefore, that the only question here is whether the state court rightfully appointed a receiver and took possession of this property. As we have seen, it was done upon a complaint filed, process issued and served, appearance entered, the receiver appointed. The receiver qualified, took possession, entered upon his duties, made contracts and purchases of property, incurred expenses and was in the administration of the trust more than a month before any bankruptcy proceedings were filed. It was argued by the learned judge of the district court in his opinion that because the defendant in this suit, M. Zier & Co., failed to make a defense and apparently consented that a receiver might be appointed, that the suit was collusive and that no jurisdiction was obtained. It is

submitted that the jurisdiction of a court can not be upset upon such grounds and in this collateral way.

Phelps v. *Mutual Reserve Fund Life Association*, 112 Fed. 453.

The cases are exceedingly rare in which a judgment or proceedings of the court can be treated as void collaterally, where the subject-matter was within the competence of the court and the parties were properly before the court. In order to get rid of the effect of such a judgment, or order, the general rule is that the proceedings must be had in the case and in the court in which the unauthorized or fraudulent judgment or proceedings were obtained.

Weiss v. *Guerineau*, 109 Ind. 438;
Hollinger v. *Reeme*, 138 Ind. 363.

III.

It was also insisted on the part of the judge of the district court that this proceeding in the Floyd Circuit Court was in the nature of a bankruptcy proceeding because the complaint there alleged the insolvency of the defendant.

We think the court was in error in this also.

In the case of *Mayer* v. *Helman*, 91 U. S. 496, it was held that proceedings by voluntary assignments under a law of Ohio providing for such assignments was not a proceeding under an insolvent law, and therefore such act of the legislature of Ohio was not superseded by the bankrupt act. On page 502 this court says:

"The answer is, that that statute of Ohio is not an insolvent law in any proper sense of the term. It does not compel, or in terms even authorize, assignments: it assumes that such instruments were conveyances previously known, and

only prescribes a mode by which the trust created shall be enforced. It provides for the security of the creditors by exacting a bond from the trustees for the discharge of their duties; it requires them to file statements, showing what they have done with the property; and affords in various ways the means of compelling them to carry out the purposes of the conveyance. There is nothing in the act resembling an insolvent law. It does not discharge the insolvent from arrest or imprisonment; it leaves his after-acquired property liable to his creditors precisely as though no assignment had been made. The provisions for enforcing the trust are substantially such as a court of chancery would apply in the absence of any statutory provision. The assignment in this case must, therefore, be regarded as though the statute of Ohio, to which reference is made, had no existence. There is an insolvent law in that state; but the assignment in question was not made in pursuance of any of its provisions. The position, therefore, of counsel, that the bankrupt law of congress suspends all proceedings under the insolvent law of the state, has no application."

Much less is an ordinary equity suit for the appointment of a receiver—not to wind up the corporation—but simply to collect assets and pay debts, a proceeding under an insolvent law.

The learned judge of the district court relied upon the decisions like *In re Smith*, 92 Fed. 135, to the effect that the making of a voluntary assignment being an act of bankruptcy, therefore the law with reference to such assignments is suspended during the existence of the bankrupt act, and that, by such an assignment, the party making the same does not carry his property into the state court, and therefore, as said by Judge Baker, for the district of Indiana, in deciding *In re Smith*, "no question of concurrent jurisdiction or conflict of jurisdiction can possibly arise." It is submitted that the question of comity between state and federal courts does not rest upon the ques-

tion whether the court which has the property has obtained it rightfully or not in the first instance. The reason of the rule, as has been so often stated by this court, is in its necessity. And the purpose is to prevent unseemly conflicts, just such troubles as have arisen from a disregard of the rule in this case.

But we are not driven to discuss this question. In the case at bar there was no voluntary assignment. It was a receivership created in a suit *inter partes*. At the time the suit was commenced and the receiver appointed there was nothing in the bankrupt act in any way applying to such receiverships, no proceedings in bankruptcy had been commenced; it was uncertain that any ever would be commenced. The state court therefore lawfully obtained possession of the property, and unless the decisions heretofore cited are entirely misapprehended, the bankruptcy court did right in filing its petition in the state court asking that court to turn over the property; and it did wrong in failing to await the decision of that court but on the contrary undertook summarily to seize possession of the property. *Johnson* v. *Bishop*, *supra*. If it be conceded that the bankruptcy court had a right to the property, that the state court was in duty bound to surrender it, the law presumes that the state court would do its duty.

The bankruptcy court, it is submitted, had no right to assume the contrary, and especially, having made itself a party to that proceeding and filed its petition, it should have awaited action upon the same. In his opinion the learned judge of the bankruptcy court says that the petition of his receiver was treated "contemptuously." All that was done was that the state court on the last day of the term continued the hearing until the next term about three weeks hence.

Evidently, in view of what was done within the next two or three days, namely, sending the vice-president of his receiver and an attorney up here to represent the facts to the bankruptcy court, the purpose of the judge of the state court was to arrive at a rightful determination in the matter, and to assist the bankruptcy court in arriving at such determination by a presentation of the entire facts to the judge thereof.

IV.

But it was said by the learned judge of the bankruptcy court that, if he were compelled to do so, he would hold that the amendment to the bankrupt law of February 5, 1903, is retroactive, the provision of section 3 of that law added by such amendment being as follows: (Defining acts of bankruptcy.)

> "Or being insolvent apply for a receiver or trustee for his property or because of insolvency a receiver or trustee has been put in charge of his property under the laws of a state, of a territory or of the United States";

and he would hold the same was applicable to this case, and that the creation of this receivership more than a month prior to the enactment which makes such receivership an act of bankruptcy, would authorize an adjudication of bankruptcy against this party.

We shall not stop to argue this question at length. If any proposition of law is settled beyond all controversy it is that no act is retroactive unless *expressly* or by *necessary implication* made so. And this is emphatically so as to any law imposing a penalty, or a new liability, or making an act a wrongful act which

was before a rightful act, or in any way imposing a new liability.

Chew Heong v. *United States*, 112 U. S. 536, 559;

Endlich on Statutes, 276;

Williams v. *Harding*, Law Reports 1 H. of L. 9;

McEwen v. *Den*, 24 How. 245.

Moreover it is submitted that upon the face of this statute it clearly ought not to be so construed. When the original bankrupt law was enacted, congress having evidently in mind this principle that no man ought to be held to have committed an act wrongful or in violation of a statute, when no statute was in force at the time such act was committed, provided:

"Section 71. This act shall go into full force and effect upon its passage: *Provided, however*, that no petition for voluntary bankruptcy shall be filed within one month of the passage thereof and no petition for involuntary bankruptcy shall be filed within four months of the passage thereof."

"B. Proceedings under state insolvency laws before the passage of this act shall not be affected by it."

There was manifested the clear purpose, first, by providing that no petition shall be filed within four months, that no one should be charged with the commission of an act of bankruptcy done before the act was passed, and, second, that no pending proceedings under state insolvency laws should be affected by it.

Now what reason is there to suppose that congress intended a different rule to be applied to this amendment creating this new act of bankruptcy? No construction such as was contended for in the bankrupt court is required by the terms of the act at all. The amendments of February 5, 1903, were many. The

provision of the last section of the act, 74, being the 19th of the amendments, that the act shall not apply to bankruptcy cases pending when this act takes effect, but such cases shall be adjudicated and disposed of conformably to the provisions of the said act of July 1, 1898, may be given full effect without any such construction. There are very many provisions to which that last section may be applied other than the one in question. For instance, on page 5, subsection 5, as to additional compensation of officers, so on page 7, section 4; so as to discharges, page 10, sub-section b, is amended by leaving out the word "fraudulent" before intent, etc.; so on page 11, section 17, the word "liabilities" in place of "judgment" in clause 2; and so on through the nineteen sections. Therefore it is submitted that the law can not be construed as retroactive.

In conclusion, therefore, we submit that the bankruptcy court transcended its authority in disregard of the rules of comity that necessarily obtain, and which this court has so many times adjudged must obtain, between the state and federal courts, that its proceedings in the premises were unwarranted and that the prisoners ought to be discharged, and pending the hearing be admitted to bail.

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IN THE

Supreme Court of the United States.

EX PARTE DAVID A. SACHS, *Petitioner.*

No. 16 Original.

SUPPLEMENTAL BRIEF ON BEHALF OF PETITIONER.

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The Bellamack Press, Indianapolis.

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We beg to submit the following as supplemental to our brief filed herein on March 20, 1903:

We do not restate the facts, nor generally repeat the argument and citations of that brief.

But we submit the following as our contentions, and the authorities supporting those contentions, as cited in both briefs.

Points and Authorities.

1. The Floyd Circuit Court was in the lawful, *actual* possession of the property in controversy when the bankruptcy proceeding commenced.

First National Bank v. *U. S. Encaustic, etc.*, 105 Ind. 227;

Pressley v. *Lamb*, 105 Ind. 171.

The fact of actual possession is undisputed.

This proceeding in state court not subject to collateral attack.

Phelps v. *Mutual Reserve, etc.*, 112 Fed. 453;
Weiss v. *Guerineau*, 109 Ind. 438;
Hollinger v. *Keene*, 138 Ind. 363.

The suit in the state court not under an "insolvency law."

Mayer v. *Hellman*, 91 U. S. 496;
Carling v. *Seymour, etc.* (C. C. A.), 113 Fed. 483.

It is idle to say that the filing of the bill and procurement of the appointment of a receiver was a fraud on the state court because preferences had been given; since, in the absence of bankruptcy proceedings, the preferences were lawful.

Sandford Fork, etc., v. *Howe*, 157 U. S. 312, 317;
McCormick v. *Smith*, 127 Ind. 230, 235.

It was uncertain whether bankruptcy proceedings would ever be commenced.

2. The rules of comity between the state court and the United States District Court sitting in bankruptcy apply in all their breadth and force.

Peck v. *Jenness*, 7 How. 612 (Bankrupt Act 1841);
Eyster v. *Gaff*, 91 U. S. 521 (Bankrupt Act 1867);
Metcalf v. *Barker*, 23 Sup. Ct. Rep. 67 (Bankrupt Act 1898);
Carling v. *Seymour, etc.* (C. C. A.), 113 Fed. 483.

If the possession of the state court is *actual*, the fact,

(if it be a fact), that the jurisdiction of the Bankruptcy Court is exclusive does not warrant the latter court in taking the possession from the state court by summary proceedings.

Moran v. *Sturgis*, 154 U. S. 256;
The Oliver Jordan, 2 Curtis, 414;
Taylor v. *Carryl*, 20 How. 583;
The E. L. Cain, 45 Fed. 367;
The James Koy, 59 Fed. 784;
Carling v. *Seymour Lumber Co.* (C. C. A. 5 Cir.), 113 F. R. 483-490-1.

This case reverses same case (*Re Macon, etc.*) in 112 F. R. 323, where the district court seems to have held opinions similar to those of the district court in the case at bar.

See also, *Temple* v. *Glasgow* (C. C. A. 4 Cir.), 80 F. 443-446.

3. And the fact that the suit in the state court was not based on a valid lien is immaterial. The power of the bankruptcy court is as plenary when there are liens as when there are not.

R. S. 4972 (Act 1867), sections 2 and 69, Act 1898;
Johnson v. *Bishop*, 1 Wool. 324;
Bradley v. *Frost*, 3 Dillon 457;
In re Price, 92 Fed. 987;
In re Lingert, 110 Fed. 927;
In re Lesser, 100 Fed. 433;
In re Wells, 114 Fed. 222;
In re Ward, 104 Fed. 985;
Smith v. *Belford*, 106 Fed. 658;
Louisville Trust Co. v. *Comingore*, 184 U. S. 18.

For discussion of rule of comity.

Cozell v. *Heyman*, 111 U. S. 176.

4. Act of 1898 (as well as of 1867) provides for intervention by representative of bankruptcy court in suit in state court.

Section 11, sub. b. and c.

5. This was actually done in case at bar by a general appearance.

Exhibits A., B. and C., pp. 173 and 53.

6. This being done, the bankruptcy court was bound to await the decision of state court in ordinary way.

Peck v. *Jenness*, 7 How. 612, 625;
Johnson v. *Bishop*, 1 Wool. 324;
Doe v. *Childress*, 21 Wall. 643;
Scott v. *Kelly*, 22 Wall. 57;
Mays v. *Fritton*, 20 Wall. 414;
Davis v. *Friedlander*, 104 U. S. 570;
Winchester v. *Heiskell*, 119 U. S. 450;
Adams v. *Crittenden*, 133 U. S. 296;
Ludeling v. *Chaffe*, 143 U. S. 301.

The bankruptcy court never got lawful possession of the property.

a. Because such possession as it got from the state court's receiver was the result of a threat to take it with "a club."

b. Because the state court receiver could not deliver lawful possession without the consent of his court.

This is elementary.

Shields v. *Colman*, 157 U. S. 168;
White v. *Schloerb*, 178 U. S. 542;
Metcalf v. *Barker*, 23 Sup. Ct. Rep. 78;
The E. L. Cain, 45 Fed. 367-370;

The James Roy, 59 Fed. 784;
Moran v. Sturgis, 154 U. S. 256.

7. The amendment to the bankrupt act of February 5, 1903, making a receivership an act of bankruptcy, is not retroactive so as to apply to this case.

All bankrupt acts have been prospective as to acts of bankruptcy.

Act 1841, 5 Stat. at Large 442;
Act 1867, 14 Stat. at Large 536;
Act 1898, sec. 71;
Chew Hong v. U. S., 112 U. S. 536, 559;
Endlich Statutes 276;
McElwan v. Den, 24 How. 245.

If the amendment is not retroactive, this receivership was not an act of bankruptcy.

In re Wilmington Hosiery Co., 120 F. 180; also 179.

ARGUMENT.

I.

1. The grant of powers to the district court sitting in bankruptcy as to dealing with property, liens and conflicting claims, was broader and more clear in the bankruptcy act of 1867 than in that of 1898.

The act of 1867 (R. S. 4972) reads as follows:

"Sec. 4972. The jurisdiction conferred upon the district courts as courts of bankruptcy shall extend:

First. To all cases and controversies arising between the bankrupt and any creditor or creditors who shall claim any debt or demand under the bankruptcy.

Second. To the collection of all the assets of the bank
rupt.

Third. To the ascertainment and liquidation of the
liens and other specific claims thereon.

Fourth. To the adjustment of the various priorities
and conflicting interests of all parties.

Fifth. To the marshaling and disposition of the dif
ferent funds and assets, so as to secure the rights of al
parties and due distribution of the assets among all the
creditors.

Sixth. To all acts, matters and things to be done un
der and in virtue of the bankruptcy, until the final dis
tribution and settlement of the estate of the bankrup
and the close of the proceedings in bankruptcy."

And section 5024 provides for provisional seizures b
the marshal as in the present act.

Section 2 of the act of 1898, so far as pertinent her
reads as follows:

"Sec. 2. That the courts of bankruptcy * * *
are hereby invested with jurisdiction * * * to

(2) allow claims, disallow claims, reconsider allowe
or disallowed claims, and allow or disallow them again
bankrupt estates;

(3) appoint receivers or the marshals, upon applic
tion of parties in interest, in case the courts shall find
absolutely necessary for the preservation of estates,
take charge of the property of bankrupts after the fil
of the petition and until it is dismissed or the trustee
qualified."

(To same effect is section 69):

"(6) bring in and substitute additional persons or e
ties in proceedings in bankruptcy when necessary for
complete determination of a matter in controversy;

(7) cause the estates of bankrupts to be collected,
duced to money and distributed, and determine con
versies in relation thereto, except as herein otherw
provided.

(15) make such orders, issue such process and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this act."

In passing it may be remarked that it seems clear that neither the clause in section 2, nor in section 69, authorizing a provisional seizure, before adjudication, by the marshal or by a receiver, is intended as a warrant for such a seizure from any party except the bankrupt himself, or some one clearly standing in his shoes. Because, in section 69, it is provided that "such property shall be released if such bankrupt shall give bond in a sum which shall be fixed by the judge," etc. In other words, no provision is made for a third party, from whom property has been seized, releasing the same by giving a bond, which, it would seem, certainly would have been done if such seizure from a third party had been intended.

Section 5044, Revised Statutes, provides that all attachments on *mesne process* issued within four months prior to the commencement of the bankruptcy proceedings shall be dissolved by the assignment made by the referee to the assignee. This provision is absolute.

Section 67, act 1898, paragraph e, has a like provision, *conditional*, however, upon the following facts:

1. If when lien attached bankrupt was insolvent *and* the attachment will work a preference.

2. If attaching creditors had reasonable cause to believe defendants insolvent and in contemplation of bankruptcy.

3. That such lien was sought or permitted in fraud of this act.

4. And paragraph f, of the same section 67 makes all levies, judgments, attachments or other liens obtained through legal proceedings against any person who is in-

solvent within four months invalid in case of bankruptcy
And this without any expressed conditions. Whether
paragraph e. and paragraph f. must not be construed to
gether, and the conditions of the former be implied in th
latter, it is not necessary here and now to inquire. Cer
tainly, so far as authority granted to the bankrupt
court to take possession of and adjudicate with referenc
to property, there is nothing in the present act, at th
utmost, giving a wider, if so wide, a scope to such au
thority than in the act of 1867.

Yet in the tenth edition of Bump on Bankruptcy, pa
213, published in 1877, the following is given as the r
sult of the decisions to that time:

"How far the courts of bankruptcy, in the exercise
their jurisdiction, may interfere with other courts, is
question that has been much discussed, and is not entire
free from difficulty. They clearly have no authority
withdraw cases instituted in other courts before the co
mencement of proceedings in bankruptcy from the
courts and proceed to settle and adjust the claims of t
parties thereto. Congress could, no doubt, have ma
an adjudication in bankruptcy operate *proprio vigore*
transfer all cases which should be pending in other cou
at the time of the filing of the petition, and to which
bankrupt should be a party, from those tribunals into
courts of bankruptcy. It has not, however, done so.
not only has not deprived the other courts of jurisdict
over such causes, but it has provided for their prosecut
and defense in those courts by the assignee. This p
ciple applies not only to all ordinary actions to colle
debt, but also to all proceedings to enforce a lien.
lien of an attachment, or the lien of a creditor u
property conveyed in fraud of creditors, or the lien
partner upon partnership funds, or the lien created b
mortgage, may be enforced in other courts when
ceedings for that purpose have been instituted before
commencement of the proceedings in bankruptcy. I
ing obtained lawful jurisdiction over the parties and

ject-matters, they have the right to determine all questions, as they arise, according to law, subject to the final judgment of the Supreme Court of the United States, in case any right or claim is set up under any statute of the United States, and such right or claim is denied by them."

"So, also, where a receiver, appointed by another court before the commencement of proceedings in bankruptcy, has taken possession of the property which belonged to the bankrupt, and the jurisdiction of such court over the subject-matter of the suit therein, and over the parties thereto when it was instituted and the receiver was appointed, and its jurisdiction to appoint such receiver are in no manner impeached or questioned, the courts of bankruptcy can not compel the receiver to give up the possession of such property without its being shown that such possession of the property by such court is void or invalid by reason of the provisions of the bankrupt law. When property is lawfully placed in the custody of a receiver by the court which appoints him it is in the custody and under the protection and control of such court for the time being, and no other court has the right to interfere with such possession, unless it be some court whose process has first taken possession, or some superior jurisdiction in the premises. Under such circumstances the courts of bankruptcy have neither such superior jurisdiction, nor such supervisory control, as to authorize them to take the property from the possession of such court, or to enjoin the receiver from further interfering with it."

Without stopping to inquire whether this is a correct summary of the law in all respects, it certainly has the support of the decisions of this court, where the representative of the bankruptcy court has intervened in the state court.

In the case at bar, as shown by his petition and the order of the Floyd Circuit Court (Volume Exhibits A., B. and C., filed with petitions, at page 173, and the order made thereon at same page), the receiver of the bank-

ruptcy court entered a general appearance and filed his petition invoking the jurisdiction and action of that court.

(This order appears in its proper place in the transcript from the Floyd Circuit Court (page 53, same volume), but the petition, being off the files at time that record was made, was introduced in evidence separately.)

Having thus made himself a party and submitted himself to the jurisdiction of that court, neither he nor the court he represented could, because an order such as was wanted was not made *instanter*, take the matter into their own hands and by threats of the use of a "club" take the property out of the hands of the Floyd Circuit Court, without the consent and against the will of the latter court.

Having voluntarily gone into that court, and invoked its action, he must abide its decision, and, if not satisfactory, have the same corrected by a higher court. The petition filed by Receiver Connor in the state court presented issuable facts, and certainly without proof of them the state court was not bound to surrender the property.

Johnson v. *Bishop*, 1 Wood. 329.

Scott v. *Kelly*, 22 Wall. 57, seems to us exactly in point. That was an attachment in a state court of New York. The bankruptcy proceeding was commenced within a month after the attachment in the state court was commenced, and one day before the attachment was levied. The assignee was summoned into the state court and contended that he was entitled to the proceeds of the attached property. This court said:

"The assignee in bankruptcy voluntarily submitted himself and his rights to the jurisdiction of the state court. Being summoned, he appeared, without objection, and presented his claim for adjudication by that court. No effort was made to remove the litigation to

the courts of the United States. It is now too late to object to the power of the state court to act in the premises and render judgment."

To the same effect are:

Mays v. *Fritton*, 20 Wall. 414;
Davis v. *Friedlander*, 104 U. S. 570;
Winchester v. *Heiskell*, 119 U. S. 450;
Adams v. *Crittenden*, 133 U. S. 296;
Ludeling v. *Chaffe*, 143 U. S. 301.

If it be conceded that the title and right of possession of the property in this case was in the receiver of the bankruptcy court, the rule is the same. The question is one of orderly procedure. Having applied to the state court for an order for the delivery of the property, he must await that order. The presumption is that it will be made in due time and according to law.

As Mr. Justice Miller says, in *Johnson* v. *Bishop*, 1 Wood. 324, on p. 330:

"If the state courts fail to recognize his legal rights, a presumption not here to be indulged, he can, in the proper mode, bring the case from the highest court of the state to the highest court of the United States. *Peck* v. *Jenness*, 7 Howard 612."

If the bankruptcy receiver had made only a special appearance in the state court, as to this point a different question would have been presented. Under such an appearance he might have applied for a stay of proceedings under section 11, act 1898, and got it (*Markson* v. *Haney*, 47 Ind. 311), and perhaps otherwise preserved his rights without voluntarily submitting to the jurisdiction of the state court.

II.

In addition to what was said in the original brief, one word as to the contention that it is only in cases where there are valid liens that *Peck* v. *Jenness*, *Eyster* v. *Gaff*, and other cases relied on by us apply.

As shown in our original brief, this is, as matter of fact, a mistake.

But no such distinction has any basis in principle. As above shown, section 4972 (act 1867) gave to the bankruptcy court powers plenary over all the assets of the bankrupt, including the "ascertainment and liquidation of the liens and other specific claims thereon," and "the adjustment of the various priorities and conflicting interests of all parties." That is, the powers of the bankruptcy court over property subject to liens was just as broad as though no lien were upon it.

In view of these provisions it seems to us clear that there is no reason in saying that the bankrupt court may take property by summary process from a state court if not subject to a lien; but if there is a lien on such property, however small, the state court may hold it.

It seems to us that the question of lien or no lien is nothing; but the fact that the property is in the custody of a state court and the consideration due that court are everything. The *actual* taking of possession by the state court is the test.

Moran v. *Sturgis*, 154 U. S. 256, 276 to 280.

In every admiralty case cited in *Moran* v. *Sturgis*, the jurisdiction of the district court is exclusive, yet as against *actual* possession in the state court, the district court, it was held, could not take the property.

The Oliver Jordan, 2 Curtis 414;

Taylor v. *Carryl*, 20 How. 583, 601;

The E. L. Cain, 45 F. 367;
The James Roy, 59 Fed. 784.

The last cited case distinguishes an assignment from a receivership.

Temple v. *Glasgow* (C. C. A., 4th Cir.), 80 F. 443-446.

The same rule is enforced in bankruptcy under present law.

Carling v. *Seymour, etc.* (C. C. A.), 113 F. 483-490-1.

III.

In the opinion of the district judge (Exhibits A., B. and C., filed with the petitions, page 161), much stress is laid on the case of *Clarke* v. *Larremore*, decided February 23, as contrary to our contentions, as to the effect of *Metcalf* v. *Barker*, and contrary to the applicability of the rules of comity in such cases.

We submit:

First, as to *Metcalf* v. *Barker*, the learned judge pays no attention to the part of that opinion on which we relied, viz.: that part referred to in the second paragraph of the syllabus, and affirming the rule of comity.

Second. In the Larremore case, 23 Sup. Ct. Rep. 363, no question of comity was raised, considered or involved. The execution creditor and the sheriff were both summoned as parties into the bankruptcy court, as well they might be under subdivision 6 of section 2 (act 1898), which provides that the court "may bring in and substitute additional persons or parties in proceedings in

bankruptcy when necessary for the complete determination of a matter in controversy.

Being thus made parties they both had a full hearing on the merits four times (*In re Kenney*, 95 Fed. 427, District Court, 97 Fed. 554, District Court, 105 Fed. 897, Circuit Court of Appeals, and finally in this court); and so far as appears, the question of comity was never thought of as involved in the case by either court or counsel. It seems to us that case, therefore, is very far from being an authority for the proposition that, where a state court has, by due course of law, taken property into its custody by its receiver, the bankruptcy court, without summoning that receiver or the creditors at whose instance he was appointed into that court, can, by a summary order, demand the property, and, if not delivered instanter, throw that receiver and all who have advised or in any way assisted him into jail for contempt.

Especially does this seem unwarranted after the receiver of the bankruptcy court has entered his full appearance in the suit in the state court and invoked its decision as to his right to the property.

IV.

As to the amendment of February 5, 1903, making a receivership an act of bankruptcy (act 1898, section 3, sub-section 4), we submit it can not apply to this case:

1. As shown in our former brief, by the original act it was expressly provided that no involuntary petition should be filed within four months of the enactment of the law, thereby preventing any act committed prior to the enactment of the law being challenged as an act of bankruptcy.

2. The act of 1841 also applied only to acts in the future.

The language is:

"Whenever such person, being a merchant, etc., *shall* depart from the state with intent to defraud his creditors, or *shall*," etc., etc.

5 Stat. at Large 442.

3. So in the act of 1867, the language is:

"Any person * * * who, after the passage of this act, shall depart," etc., etc.

14 Stat. at Large 530.

4. The amendment of February 5, 1903, adds "mining" corporations to the list of those which may be adjudged involuntary bankrupts.

Section 4 b.

Can such adjudication against a mining company be made for an act done before the bankrupt law applied to it at all?

It seems to us this question must be answered in the negative, according to all rules of statutory construction.

V.

This receivership in the Floyd Circuit Court was a legitimate and proper proceeding under the statutes of Indiana. This has been repeatedly adjudged by the supreme court of Indiana.

First National Bank v. *The United States, etc.*, 105 Ind. 227;

Pressley v. *Lamb*, 105 Ind. 171.

The head notes of the former case are as follows:

"Receiver.—Appointed by Judge in Vacation.—Insolvent Corporation.—Under section 1222, R. S. 1881, a

judge in vacation may appoint a receiver for a corporation which is in imminent danger of insolvency."

"Same.—Answer Admitting Complaint.—Adversary Proceeding.—Upon the filing of a complaint against such a corporation, alleging such cause for the appointment of a receiver, an answer admitting the truth of the complaint does not make the suit less adversary in character than it otherwise would be."

"Same.—Voluntary Appearance of Defendant.—The voluntary appearance of the defendant in such proceeding is equivalent to the service of process, and the suit is commenced and pending at and from the time of such appearance. Sections 315 and 1230, R. S. 1881."

"Same.—Validity of Proceeding in Vacation.—Collateral Attack.—The court having jurisdiction of the subject-matter of the suit and of the parties, the proceedings and orders of the judge in vacation are the proceedings and orders of the court, and, even if erroneous, are not void, and can not be collaterally attacked."

Unless this law is construed as retroactive it is clear that not only the creation of the state receivership was not an act of bankruptcy, but it furnished no ground for imputing to defendant an intent to evade or commit a fraud against the bankrupt act.

In re Wilmington Hosiery Co., 120 F. R. 179 and 180.

VI.

But it was insisted by the honorable district judge on the hearing below, and the claim is reiterated and emphasized in his opinion, delivered at the conclusion of the trial, (Exhibit B to Petitions, page 158), that this property "was *voluntarily* and *freely* turned over" by the state court receiver to the federal court receiver.

We submit that in this the district judge was mistaken both as matter of law and of fact.

First, as matter of law, neither the receiver of the Floyd Circuit Court, nor his attorney, had any authority to turn the property over to the receiver of the district court.

On pages 41 to 49 of the Exhibits to the petitions will be found the report and petition of the New Albany Trust Company, the receiver of the Floyd Circuit Court, asking instructions with reference to going to the federal court, and presenting the matters in controversy to that court. And on pages 50 to 53 is the order of the Floyd Circuit Court upon that petition.

At the bottom of page 51, we find the following:

"And said receiver is now hereby ordered and directed through its attorney, to proceed to Indianapolis, Indiana, and there, by a limited appearance and by protestation against appearance only, by petition upon such appearance only, lay before said District Court of the United States for the District of Indiana, the facts with regard to the matters herein," etc.

On the bottom of page 52, we find the following:

"It is further ordered that this court shall retain such control of said matters as may be necessary for the purpose of the entry of any and all such orders as may be deemed proper and necessary herein and therein."

In this order is found the only and entire authority for any action on the part of the receiver of the state court with reference to the federal court, and very clearly there is in it no authority to surrender the property. Not only so, but on page 54 the receiver and Mr. Watts, its attorney, make to the Floyd Circuit Court a report, and, on page 55, we have the order of the court refusing to sanction what has been done, and a rule against Watts for contempt of the Floyd Circuit Court for such action. And on page 56 we have the further report of the New Al-

bany Trust Company, of its offer to turn over said prop erty to the federal receiver, and the tender of its resig nation as receiver of the state court. And on page 57, the order of the judge of the Floyd Circuit Court, citing that company to show cause why it should not be attached for contempt for such action. And thenceforward the entire proceedings show most clearly that the state court never either authorized or consented to the delivery of this property.

Could property in custody of a court be turned over by its receiver to another court without the consent and against the will of the former court?

Judge Simonton answers this question in *The E. A. Cain*, 43 Fed. 367, on page 369, as follows (cited with approval in *Moran* v. *Sturgis*):

"The tug thus was in the custody of the law. Beach, Rec., sec. 221; *Covell* v. *Heyman*, 111 U. S. 176, 4 Sup Ct. Rep. 355. No act of the receiver, no waiver of claim on his part, could change the status of the property, or affect the control of the court. Even his refusal to ac cept the appointment, or to act on the order, or his wil ful abandonment of his duty, would not work such change or affect such control. Beach, Rec. *supra*. The receiver derives his whole authority from the court, acts under its orders, has little or no discretion; none, indeed not reviewable by and under the control of the court. See *Thompson* v. *Insurance Co.*, 136 U. S. 287; 10 Sup Ct. Rep. 1019. As he took custody by order of the court, he can release from custody only by its order; and if the property, being in the custody of the law, is placed in his keeping, his laches, even his abuse of his authority can not take it out of such custody. Wherever, within the territory of the court, the property is, it is in the cus tody of the law. The presence of the officer is simply a form of notice of this. His absence does not destroy this custody. This being so, and this tug having been taken possession of by process of the state court, an

by that court placed in the custody of its receiver, it can not be held by any process out of this court until discharged by the order of the state court."

Second. As matter of fact, when upon the witness-stand, Henry E. Jewett, the vice-president and representative of the New Albany Trust Company, who went under the order of the Floyd Circuit Court to Indianapolis, and, under protestation and a special appearance, made the representation to the district court, and who, it is claimed, surrendered this property, "voluntarily and freely," testified that, during the presentation of the matter to the honorable district judge, the latter insisting upon his right to the property, said, in substance: "I do not want to go to New Albany with a club, but I will do so if it is necessary to sustain the jurisdiction of this court." Transcript of Evidence, page 168.

This occurrence is set forth in the printed petition of Mr. Watts to this court, on page 14, where it is said:

"That after said explanation and statement had been made and argued by this petitioner before the said United States District Court, which argument and explanation consumed several hours and continued over from Monday, February 16, until Tuesday, February 17, the judge of said United States District Court refused in any way or to any extent to reconsider, modify or set aside his said order directing Frederick D. Connor, receiver of the said United States District Court, to summarily take from the receiver of the said Floyd Circuit Court the said property, but on the contrary peremptorily demanded of said Henry E. Jewett, as the representative of the New Albany Trust Company, to state whether or not he would turn over the property, in the hands of the New Albany Trust Company as receiver, to Frederick D. Connor, receiver, and so demanded of this petitioner whether or not he, as counsel for the New Albany Trust Company, receiver, would advise it to turn over said property to Frederick

D. Connor, receiver, the judge remarking at the time that he did not want to go to New Albany with a club, but would do so if necessary to obtain the property. Under these circumstances, and not otherwise, and believing that said demand of said judge of said United States District Court was peremptory, the petitioner, as counsel for the said New Albany Trust Company, stated that he would advise the said New Albany Trust Company, receiver, to turn over said property to the said Frederick D. Connor, receiver."

The petition of Sachs contains the same statement.

It is submitted that, under the circumstances, even if the state court receiver and Watts had had authority so to do, this was not a voluntary and free turning over of the property.

It is submitted further, that Mr. Watts and Mr. Jewett, the representative of the trust company, did not misinterpret or give undue weight to the language, or to the "club," of the honorable district judge, as is shown by the subsequent proceedings in the case.

On the trial, the learned judge, while Mr. Watts was upon the witness-stand (pages 228-9), demanded that he should declare whether he defended upon the ground that the district court had made orders without jurisdiction, exceeded its authority in such orders, or whether, upon the ground that he had not done the acts charged. It was objected that the defendant had a right to insist upon both grounds of defense.

And, on page 170 in the opinion filed at the conclusion of the trial, the learned judge seems to make it a matter of complaint that the jurisdiction of his court was questioned by counsel for defendants, and this fact seems to be treated as an aggravation of their offense. Surely we have not arrived at the point in jurisprudence, where for counsel

sel to question the jurisdiction of a court in a respectful way ought to be charged as an offense against the client.

In conclusion, we beg to suggest that if, upon the facts and upon the decisions of this and other courts, the law as held by the bankruptcy court is so clear that any lawyer taking, and acting on a different view, ought to be sent to jail, the practice of the law has become a very dangerous occupation.

W. H. H. Miller,
W. M. Smith,
Attorneys for D. A. Sachs.

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JAMES H. McKENNEY,
Clerk.

— IN THE —

Supreme Court of the United States.

In re WILLIAM W. WATTS AND DAVID A. SACHS.

ON PETITION FOR WRIT OF HABEAS CORPUS.

BRIEF ON BEHALF OF FREDERICK D. CONNOR, RECEIVER IN BANKRUPTCY OF M. ZIER & CO., THE INLAND STEEL COMPANY, JOHN C. THURSTON AND JOHN DEY, PETITIONING CREDITORS, AND OTHER CREDITORS.

GEORGE H. HESTER,
WILLIAM WILHARTZ,
Attorneys for Receiver, et al.

LEDGER COMPANY PRINT, NEW ALBANY, IND.

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This being a proceeding of a criminal nature, prosecuted in the name of the Government against William W. Watts and D. A. Sachs, to which the Receiver in bankruptcy of the District Court and the creditors of M. Zier & Co. are not parties, we fully appreciate the favor of being permitted to file a brief in their behalf.

It is apparent that they have a vital interest in the determination of these causes. This is clearly revealed by the mere reading of the petitions that have been filed and the grounds upon which these petitioners seek relief. The proceedings in bankruptcy of the United States District Court, out of which arose these prosecutions for contempt, are at-

tacked as void. The jurisdiction of the Court and its right to act in respect to this property is denied and assaulted. If the Court had no jurisdiction to make the orders which these petitioners are alleged to have violated, then it has no right to retain this property or administer it in bankruptcy. Not only this, but the bankruptcy law itself is at stake; for it is sought by these petitioners to strip the Bankruptcy Court of its power to enforce the law. Every creditor, therefore, of an insolvent concern, who may, at any time hereafter, have an interest in the enforcement of the bankruptcy law, is an interested party here. If the position of these petitioners and their counsel is sustained by this Court, it is not intemperate to say that the practical effect will be to wipe out of existence the Act of Congress providing for a uniform system of bankruptcy and to permit the administration of insolvents' estates in the various State Courts under various State laws.

We, therefore, submit the following in support of the proceedings in the District Court, asserting our belief that all the orders made by the District Judge, including those in which these petitioners were sentenced, were wholly warranted and justified in law, and wholly appropriate to the facts that came before him.

STATEMENT.

A statement of the facts and history of these causes has been presented to this Court in the petitions for writs of *habeas corpus* and *certiorari* and in the briefs of counsel in support thereof. We can readily understand how the Court, upon the *ex parte* presentation of these statements, immediately issued the writs and released these petitioners. But, being familiar with the cases from their inception, we do not hesitate to say that both of these statements are wholly misleading, in that they contain but half the truth, and that, when the facts are fully known to the Court, it will be seen

that the conduct of the District Court was not only justifiable and legal, but eminently dignified and proper.

We believe that the following statement of facts will be found to be more nearly in accordance with the evidence given in the cause, the finding of the District Court and the history of the proceedings as shown by the record.

For some time prior to December 30, 1902, the corporation of M. Zier & Co., which was located at New Albany, Indiana, and engaged in the boiler manufacturing business, through the mismanagement of its Vice-president, M. Zier, became hopelessly involved and found itself owing $80,000 of debts and owning but a little over $30,000 of assets. Mr. M. Zier, who was in charge of the plant, and the active manager of the business affairs of the corporation, realizing that the firm could not continue business and must go into liquidation, for some time past, had been fraudulently drawing from the corporation's treasury, by means of padded payrolls, funds which he intended and afterwards did devote to the payment of preferences, fraudulent under the act of bankruptcy, to the extent of over $13,000. (Tr. of Ev. pp. 8 to 14 inclusive.) Previous to December 30, 1902, $3,100 of this money had been paid to Jos. T. Ryerson & Son, a corporation of Chicago, Illinois, and a large creditor of M. Zier & Co. On that day, M. Zier placed in the hands of his attorney, Charles L. Jewett, the sum of $9,600 and directed him to take all but $600 of it to the city of Chicago, and pay it over to the agent of his sister-in-law, Minnie M. Zier, who was also a stockholder and creditor of the firm. It is shown by the evidence and was found by the Court, that all of the parties connected with this firm knew of the insolvency of the concern; knew of the purpose of going into the State Court to obtain the appointment of a Receiver and of the purpose for which this money had been withdrawn and to which it was to be devoted. (R. p. 133). Obedient to these directions, Mr. Jewett

proceeded to Chicago and, on the 29th day of December, there met the agent of Mrs. Zier, paid over to him the sum of $9,000 and retained the other $600 of the amount given him by M. Zier as expenses and fees for services thereafter to be rendered the estate.

On the same day, Mr. Jewett, further acting under the direction of M. Zier, arranged with the firm of Ryerson & Son to come to the city of New Albany on the next day, and there apply for the appointment of a Receiver of the M. Zier & Company corporation. (Tr. of Ev. pp. 47 to 51 inclusive). It was also arranged at this meeting, in accordance with the wishes and direction of M. Zier, that the New Albany Trust Company, a concern in which Mr. C. L. Jewett and his brother, Mr. H. E. Jewett, owned a large and controlling interest, should be appointed Receiver.

As a consequence of this collusive (and, we think, fraudulent) agreement, the agent of Ryerson & Son, on the 30th day of December, 1902, went to the city of Louisville and there consulted with Mr. W. W. Watts, one of the petitioners herein, in regard to carrying out the plans arranged at Chicago the day before. Mr. H. E. Jewett was called to Louisville by telephone to meet these gentlemen and, after a consultation in Mr. Watts' law office on the subject, they proceeded to New Albany, arranged for a hearing before the Judge of the Floyd Circuit Court in chambers (the Court not then being in session), and filed a complaint on behalf of Ryerson & Son, asking for judgment in their favor and the appointment of a Receiver, the charges in the complaint being that M. Zier & Co. *was hopelessly insolvent* and was dissipating its property and assets. (Tr. of Ev., pp. 17 to 19, and pp. 26 to 29.) To this action, M. Zier, accompanied by his attorney, Mr. Jewett, waiving the issuing of all notice and summons, voluntarily and immediately appeared in person, and consented to and approved the appointment of the New Albany Trust Company as Receiver. The Trust Company immediately qualified and proceeded to administer the estate and to wind up the bankrupt's affairs, preparatory to selling the assets and distributing the proceeds among the creditors.

Subsequently to this time, a meeting of the creditors of M. Zier & Co. was called by the New Albany Trust Company as Receiver, by notices sent through the mail, to be held before the Floyd Circuit Court on the 24th day of January. This meeting was held in the presence of the Court, but was absolutely informal, and, so far as the creditors present were concerned, amounted to nothing more than a general discussion of the advisability of operating the plant or selling it out at once. None of the petitioning creditors in bankruptcy had filed their claims or any other pleading or paper in the case. There had been no sales of property. No dividends whatever had been paid by the Receiver and no money received by any claimant. (Tr. of Ev., pp. 28 to 31, inc.)

It appeared to be the aim of Ryerson & Son and some other creditors, who had received large preferences, to prevent this estate from reaching the Bankruptcy Court. With the view, apparently, of "anchoring" the administration of the estate in the State Court, Mr. Watts prepared an order and had it adopted by the Floyd Circuit Court, *enjoining all creditors from prosecuting their claims in any other Court or in any other way than by intervention in this proceeding in the Floyd Circuit Court.* (R., pp. 50 to 52, inc.)

On the 6th day of February, 1903, the Inland Steel Company, John C. Thurston and John Dey, doing business as the Dey Time Register Company, as petitioning creditors, filed in the United States District Court, at the city of New Albany, their petition in involuntary bankruptcy, to have M. Zier & Co. declared a bankrupt. It was alleged in this petition that the concern was hopelessly insolvent and that within four months next preceding the date of the filing of the petition, the said M. Zier & Co. had committed acts of bankruptcy by transferring to the firm of Jos. T. Ryerson & Son, of Chicago, and Minnie M. Zier, of Minneapolis, creditors of M. Zier & Co., certain portions of the property of said M. Zier & Co., with intent to prefer said creditors over and above the other creditors of said concern. It was further alleged in this petition that it was absolutely necessary, for the preservation of the estate of M. Zier & Co., and for the

benefit of all its creditors alike, that a Receiver in Bankruptcy be appointed at once to take charge of the affairs of said company, and a prayer to this effect followed. (R., p. 66.)

The Court did not act immediately upon this petition, but held the same under advisement and consideration for five days and until the 11th day of February, 1903. On this day, the said Inland Steel Company, one of the petitioning creditors, filed a further petition (R., Ex. B., p. 71), alleging that the New Albany Trust Company, Receiver of the State Court, was controlled by Henry E. Jewett, attorney for M. Zier & Company and Vice-president of said New Albany Trust Company; that the said Receiver had placed in charge of said plant, Michael Zier, who was wholly incompetent for said business and unfamiliar with the work essential to its safe conduct and that if said Receiver was permitted to remain in charge, it would result in injury and detriment to the said creditors of said M. Zier & Co., who were entitled to participate in said estate; that W. W. and J. R. Watts, the attorneys for Jos. T. Ryerson & Son, who procured the appointment of said New Albany Trust Company as Receiver, were acting as attorneys for said Receiver; that it was feared that said Receiver was friendly to Jos. T. Ryerson & Son, to the detriment of the creditors at large of said bankrupt; and that it was absolutely necessary for the preservation of said estate that a Receiver in Bankruptcy be appointed, for which relief they again prayed.

Still the District Court hesitated to act, and thereafter, on the 11th day of February, 1903, the Inland Steel Company filed an additional and supplemental petition, in which it alleged (under the terms of the amendment of the Bankruptcy Act, which was approved and in force February 5, 1903), the appointment by the Floyd Circuit Court of a Receiver for the property of said concern and that said Receiver immediately took charge of all of its property and was then operating the same in the interest of Jos. T. Ryerson & Son, and against the other creditors, and for the third time they prayed that a Receiver be appointed. (R., p. 75.)

Upon the filing of this third petition and after requiring

the petitioning creditors to execute to M. Zier & Co. a bond in the sum of $20,000, the Court appointed Frederick D. Connor as Receiver and directed in its order of appointment that he should take into his possession the sheet-iron and boiler manufacturing plant of said M. Zier & Co., together with all its other property. It was further ordered that the New Albany Trust Company should deliver up to said Receiver all of said property and effects of said M. Zier & Co. then in its possession and refrain from interfering in any way with such Receiver's possession. The Receiver, Mr. Connor, immediately qualified by giving bond as required by the Court in the sum of $10,000. (R., p. 74.)

On the 13th day of February, 1903, and before the Receiver of the District Court had made any demand for the property, upon learning of the appointment of said Connor as Receiver by the United States District Court, Mr. W. W. Watts, petitioner herein, proceeded from his home in Louisville, Kentucky, to the city of New Albany, and there, after a consultation in their office with Charles L. Jewett and Henry E. Jewett, attorneys, telephoned to the city of Indianapolis, asking the District Judge to restrain the actions of the Receiver appointed by him on the 11th, until he (Watts) could procure an order from the Floyd Circuit Court permitting him to do so and come to Indianapolis and present to him reasons why he should not have appointed a Receiver and why his order made therein should be annulled. This favor, requested by Mr. Watts, Judge Anderson (the District Judge) readily granted. He immediately caused the Receiver of this Court and the attorneys interested in the case to be notified to take no further steps until the hearing could be had on the questions to be suggested by Mr. Watts, on the 16th day of February, at Indianapolis. No further action was taken by the Receiver to obtain possession of the property except this; that with a view to observing that very comity and respect to which, it is so loudly proclaimed by counsel, the State Court was entitled, the Federal Receiver filed, in the cause pending in the State Court, a petition showing his appointment and embracing a certified copy of the order

appointing him. This petition was filed about 9 o'clock on the morning of Saturday, the 14th of February. (R. p. 173).

After procuring the above favor and concession from Judge Anderson, and after he had been apprised of the filing of the petition of Connor in the State Court and had read the same, on the morning of February 14th, Mr. Watts went before the Judge of the Floyd Circuit Court and filed a petition on behalf of the New Albany Trust Company as Receiver, reciting the fact of the filing of the petition in bankruptcy and the appointment of a Receiver by the Federal Court, *and prayed that each of the petitioning creditors, together with the United States Marshal, the Receiver of the District Court and the attorneys interested in the case, be enjoined and restrained from taking any further steps to secure the possession of this property and further prayed that they each be cited to show cause why they should not be punished for contempt for the acts already done.* (R. p. 41 to p. 49, inc.) Mr. Watts, at the same time, submitted an order covering these points, which he had prepared, and at his request it was adopted by the Judge of the Floyd Circuit Court without a single alteration, except that the names of the attorneys were stricken out therefrom. (R. p. 50 to p. 53, inc.).

After thus violating the courtesy and abusing the privilege granted by the Judge of the United States District Court, Mr. Watts, with Mr. Jewett, Vice-president of the New Albany Trust Company, Receiver, proceeded to Indianapolis, and for nearly two days, the 16th and 17th of February, argued before the Court against his right to appoint a Receiver or to take any steps in the bankruptcy proceedings to obtain possession of the property. At the conclusion of this argument, Judge Anderson announced that it was his opinion that the Bankruptcy Court had supreme and exclusive jurisdiction in the matter, and he asked Mr. Watts and Mr. Jewett if, in their judgment, it would not be best, in order to avoid a clash of jurisdiction, to voluntarily turn the property over to the United States Receiver. After considering the question for two hours over the noon adjournment, these gentlemen came into Court and each of them announced that

they agreed with the Court as to the advisability of turning this property over to the Receiver of the Bankruptcy Court. Mr. Watts at that time stated to the Court that he would do all in his power to see that the proceedings in the State Court of February 14th were stricken out and annulled, and that he would endeavor to have the State Court make an order directing them to deliver the property. (R. p. 137 and 138. Tr. of Ev., pp. 34-35.)

Leaving Indianapolis after this meeting, as Mr. Watts himself testified, the nearer he got to his home in Louisville, the more he thought he had made a mistake in agreeing to turn the property over. (Tr. of Ev., p. 176.) In this state of mind, the next day after his return, he procured his confidential friend, Mr. D. A. Sachs, to go with him to New Albany for the ostensible object of protecting him (Watts) against the wrath of the Judge of the Floyd Circuit Court, on account of doing what he had conceded was the right thing. As a matter of fact, this was, at most, but incidentally the purpose of their visits to New Albany during those days. The evidence shows, and the District Court so finds, that they were there for the purpose of avoiding the promise made to it, and to circumvent the turning of this property over to the Federal Receiver. (R., pp. 163, 164 and 165.) They talked with the Circuit Judge of calling out the State Militia to prevent the United States Court from getting the property. And even when they found that the New Albany Trust Company had voluntarily carried out its stipulation to the District Court, they set on foot the proceeding that afterwards resulted in the Federal Receiver being forcibly ejected from the property and the Receiver appointed on their application, taking possession. They met the Judge of the Floyd Circuit Court, on this and each succeeding day during that week, and consulted together on the subject in saloons, on the street and in the Judge's office. (Tr. of Ev., p. 116 to 138 inc.) At one of these meetings, it may be stated, at the joint suggestion of Mr. Sachs and Mr. Watts himself, he was cited by the Circuit Judge for con-

tempt for having made this agreement to turn over this property. The New Albany Trust Company was likewise cited for the same thing.

On the 19th day of February, upon presentation of a certified copy of his appointment; Mr. Connor as Receiver, in accordance with an order made by the District Court on the 17th, (R., pp. 77 and 78) demanded of the New Albany Trust Company possession of the property of M. Zier & Co. Thereupon Mr. H. E. Jewett, as Vice-president of the Receiver, delivered to Mr. Connor complete possession and control of all of the property and assets of the Zier & Co. corporation in the hands of the New Albany Trust Company as Receiver, excepting the cash on hand. Mr. Connor, as Receiver, immediately took complete charge and possession of the manufacturing plant and property in person and then placed it in the hands of a custodian. He retained possession until the 20th day of February, 1903, when a demand was made on him by Charles D. Kelso, who had been appointed in the place of the New Albany Trust Company, removed, of M. Zier & Co. by the Floyd Circuit Court, to deliver to him all of said property. Upon his refusal to comply with the demand, the Judge of the Floyd Circuit Court, who was waiting at his chambers at the court house in the City of New Albany, at the hour of 7:30 p. m. for the purpose, on said day issued a writ to the Sheriff of Floyd County, directing him to immediately take possession from said Connor of all the property of M. Zier & Co. and deliver the same over to Charles D. Kelso as Receiver. In obedience to this writ, the Sheriff did go to the plant, and there, in the night time, forcibly and violently ejected from the buildings and property of M. Zier & Co., the custodian placed there in charge of the same by Mr. Connor and drove him from the premises. Mr. Kelso then took possession and held it until the 26th day of Febru[illegible] when he again voluntarily delivered the same to Mr. C[illegible], who has ever since retained possession. (Trans. of Ev., pp. 6 to 13.)

It may also be stated in this connection, that on the 27th day of February, 1903, there was paid to Mr. Connor as Re-

ceiver, by Mr. C. L. Jewett, the said sum of $9,600, which had been placed in his hands to be paid to Minnie M. Zier under the fraudulent circumstances above set out. (Tr. of Ev. pp. 60-61). This money was in the custody of the Receiver of the State Court, whatever, therefore, becomes of the *other* property, this part of the estate, at least, would have to be administered in the Bankruptcy Court. So that, if the jurisdiction of the District Court in obtaining this property is denied, it will result in the strange and anomalous situation of part of the estate being administered in one Court and part in another.

POINTS AND AUTHORITIES.

All State laws for the administration of insolvents' estates and all actions and proceedings thereunder are suspended by the enactment of the general bankruptcy law.

In re Smith *et al.*, 92 Fed., 135.
Tua vs. Carriere, 117 U. S., 201-209.
In re Bruss-Ritter Co., 90 Fed., 651.
Lea *et al.* vs. George M. West Co., 91 Fed., 237.
In re Rouse Hazard & Co., 91 Fed., 96.
Lothrop vs. Highland Foundry Co., 128 Mass., 120.
Harmenter Mfg. Co. vs. Hamilton, 51 N. E., 529.
Harbough vs. Costello, 56 N. E., 363.
In re Gutwillig, 90 Fed., 475.

The jurisdiction of the Federal Courts over the administration of insolvent estate is exclusive and supreme.

In re Merchants Insurance Co., 6 N. B. R., 43.
In re Smith *et al.*, 92 Fed., 135.
Harbough vs. Costello *et al.*, 56 N. E., 363.
Watson vs. Bank, 11 N. B. R., 161.

The Bankruptcy Act of 1898 authorizes the District Court "to make such orders, issue such process and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of this act."

The jurisdiction of the bankruptcy court being supreme, it may properly, by summary process, obtain possession of property in the hands of an assignee or other officer of a State Court.

In re John A. Etheridge Furniture Co., 92 Fed., 329.
White vs. Schloerb, 178 U. S., 542.
Bryan vs. Bernheimer, 181 U. S., 188.
Mueller vs. Nugent, 184 U. S., 1.
In re Tune, 115 Fed., 906.
In re Green Pond R. Co., 13 N. B. R., 118, Fed. Cas. No. 5786.
In re Safe Deposit and Sav. Inst., 7 N. B. R., 392 Fed. Cas. No. 12211.
In re Washington Marine Ins. Co., 2 Ben., 292, Fed. Cas No. 17246.
In re Merchants Ins. Co., 3 Biss., 162, Fed. Cas. No. 9441.
In re National Life Ins. Co., 6 Biss., 25, Fed. Cas. No. 10,046.
In re Whipple, 6 Biss., 516, Fed. Cas. No. 17,512.
In re Smith *et al.*, 92 Fed., 135.
Clark vs. Larromore, 23 Sup. Court Rep., 363.

Summary proceedings are also authorized to take property from the hands of a *Receiver* of a State Court.

In re Merchants Ins. Co., 6 N. B. R., 43.
In re Lengert Wagon Co., 110 Fed., 927.
In re Stork Lumber Co., 114 Fed., 360.
In re Bruss-Ritter Co., 90 Fed., 651.
Platt vs. Archer, 9 Blackf., 559; Fed. Cas. No. 11,215.

The proceeding in the State Court for the appointment of a Receiver of M. Zier & Co., was, in substance, a voluntary assignment, or bankruptcy proceeding. Every asset of the insolvent was placed by it in the hands of the Receiver selected by it. The purpose was the distribution of these assets among all its creditors.

In re John A. Etheridge Furniture Co., 92 Fed., 329.
In re Storck Lumber Co., 114 Fed., 360.

The cases at bar do not involve either the question of property held by adverse claim, or that of a lien attaching more than four months previous to the bankruptcy proceedings. The following cases relied on by the petitioners are not, therefore, in point.

Peck vs. Jenness, 7 How., 625.

Louisville Trust Co. vs. Commingore, 184 U. S., 18.

Metcalf vs. Barker, 23 Sup. Court Rep., 363.

The State Court having no jurisdiction whatever after the filing of the petition in bankruptcy, it had no power to hear and determine the question of whether or not it would relinquish the property. It became its duty to do so at once, upon being informed of the proceedings in the United States Court, and every step taken thereafter with reference to the property and its custody was *coram non judice.*

If a Receiver is appointed by a Federal Court and actually takes possession of the property, possession will not be yielded to a Receiver subsequently appointed by a State Court, although the suit in the State Court was commenced before that in the Federal Court.

East Tenn., Virginia and G. R. Co. vs. A. & T. R. Co., 49, Fed. 608.

Central Trust Co. of N. Y. vs. Chattanooga R. Co., 69 Fed., 950.

Where a State Court has no jurisdiction over property and loses the actual possession therof to the Federal Court, there remains no possession by the State Court, either actual or constructive.

The Willamette Valley, 62 Fed., 293.

The Willamette Valley, (C. C. A.) 66 Fed., 565.

Moran vs. Sturges, 154 U. S., 256-293.

Where there is neither actual nor constructive possession there can be no obstacle to proceeding summarily, and an action thus taken can not be invalidated by relation.

Moran vs. Sturges, 154 U. S., 256-284.

The Bankruptcy Court having been given voluntary and peaceable possession, the question of comity between the Courts is not involved, except as it applies to the action of the State Court in retaking the property. It is a question of the supremacy of the Constitution and laws of the United States.

In re Tune, 115 Fed., 906.

East Tenn., etc., R. Co. vs. A. & T. R. Co., 69 Fed., 950.

Where property is in the custody of the Bankruptcy Court, no other Court and no person acting under any process from any other Court, can, without the permission of the Bankruptcy Court, interfere with it; and, to so interfere is a contempt of the Bankruptcy Court.

In re Vogle, 7 Blackford, 18-20.

Moran vs. Sturges, 154 U. S., 256.

Freeman vs. Howe *et al.*, 24 How., 450-459.

ARGUMENT.

The comprehensive review of the law and facts in these cases in the opinion of the District Court leaves very little to be added here. However, at the risk of repetition, we desire to try to emphasize some of the points brought out and to call attention to some other phases of law and facts, as they affect the rights of the petitioning creditors in the bankruptcy proceedings below.

The power of Congress to pass laws providing for a uniform system of bankruptcy throughout the United States is warranted by express provision in the Constitution. Art. 1, Clause 8, provides:

> "The Congress shall have power . . . to establish . . . uniform laws on the subject of bankruptcy throughout the United States."

In accordance with this authority, Congress has passed such a law. It is a familiar rule, as observed by Judge Anderson in his opinion in this case, that when ever, by the exercise of express constitutional authority, Congress occupies a field of the law, it does so to the exclusion of the legislative and judicial powers of the different States. It seems clear, therefore, that the enactment of the general bankruptcy law has suspended all State laws for the administration of insolvents' estates, and all actions and proceedings thereunder. And this principle is strongly upheld by the decisions of this Court and other Federal Courts and also, in the very strongest of terms, by the Supreme Courts of several of the States.

Referring to the insolvent laws of the State of Louisiana, this Court, in the case of Tua vs. Carriere, 117 U. S., 201 at page 210 say:

> "If those laws had then been enacted for the first time, they would, so far as inconsistent with the bankruptcy act have been inoperative while that act remained in force, but upon its repeal would have come into operation."

The Supreme Court of the State of Illinois, in the case of Harbough vs. Costello, *et al.*, 56 N. E., 363, holds, that even where no proceedings in bankruptcy have been instituted, the possession by an assignee in voluntary assignment proceedings is without legal authority.

The Court by Magruder, J., say:

> "It is provided in section 8 of the first article of the Constitution of the United States, that 'Congress shall have power . . . to establish . . . uniform laws on the subject of the bankruptcies throughout the United States.' In interpreting this provision of the Constitution, it has been held that the power to pass insolvent or bankrupt laws was not thereby taken away from the States until Congress itself should ex-

ercise the power thereby conferred by the passage of the bankrupt law. When, however, a bankrupt law is passed by Congress, any State law upon the subject which may exist is suspended in its operation. As soon as a national bankruptcy act goes into effect, State insolvency laws are suspended and become inoperative, at least so far as they conflict with the acts of Congress upon the subject, and so far as they embrace the same subject matter as is embraced in the act of Congress."

Citing from Black on Bankruptcy, the Court, in the above case, further says:

"The passage of a national bankruptcy law by Congress renders it supreme. The State laws in force must yield to it, and can no longer operate upon persons or cases within the purview of the Federal statutes. The latter does not, indeed, repeal or destroy the State laws on the same subject, but it suspends their operation. If the State law and the Federal Act operate upon the same subject matter, upon the same property, upon the same rights, and upon the same persons, creditors as well as debtors, or may so operate, they can not go together without direct and positive collision and in such a case the Federal enactment suspends or supersedes the State law."

In re Bruss-Ritter Co., 90 Fed., 61, the same point is decided. In this case it is said:

"The power of Congress to enact a general bankruptcy statute is secured by constitutional provision. In the absence of such congressional enactment, the States are free to provide for insolvency relief of limited extent, but when Congress exercises its authority by a general enactment, all such action is suspend-

ed from such time, and subject only to such limitations as may be prescribed in the Act. Tua vs. Carriere, 117 U. S., 201-209."

As remarked in Platt vs. Archer, 9 Blackford 559, (Fed. Cas. 11,213) this authority of Courts "is paramount and exclusive and so is the jurisdiction of the District Court thereunder."

Other cases sustaining the same doctrine are:
Lea *et al.* vs. George M. West Co., 91 Fed., 237.
In re Bruss-Hazard & Co., 91 Fed., 96.
Lothrop vs. Highland Foundry Co., 128 Mass., 120.
Parmenter Mfg. Co. vs. Hamilton 51 N. E., 529.

It can not be doubted, furthermore, that the jurisdiction of the Federal Courts over the administration of insolvent estates when once invoked, is exclusive and supreme. If this were not so, the purpose and intent of Congress in the passage of the bankruptcy law, to establish a uniform system of bankruptcy throughout the United States, would be nullified.

In the case entitled *In re* Merchants Insurance Co., 6 N. B. R., 34, decided by Judge Blodgett, formerly of the seventh Circuit, a petition was filed to have the Insurance Co. declared a bankrupt. Previous to this, suit had been brought in the State Court of Illinois to dissolve the corporation and a Receiver had been appointed in that suit prior to the institution of the proceedings in involuntary bankruptcy. The question arose whether or not the Receiver of the bankruptcy Court was entitled to the possession of the property and to administer it, notwithstanding it was then in the possession of the Receiver of the State Court. Judge Blodgett said:

"The object and intent of the general bankrupt law is to place the administration of the affairs of insolvent persons and corporations exclusive under the jurisdiction of the Federal Courts of bankruptcy; and the enactment of the general bankruptcy law, now in

> force, suspended all actions and proceedings under State insolvent laws. But, it is objected that the proceedings in the State Court here complained of, being in accordance with a general statute of this State and part of the organic law by which the respondent exists, and being predicated mainly upon the reserved right of the State to protect its citizens against irresponsible insurance companies, and the State Court having acquired jurisdiction of the parties and subject matter, this Court can not now interfere as a bankrupt Court to take charge of and administer the assets in question, although the insolvency of the respondent is fully conceded. It seems enough to suggest in answer to this position, that, if correct, any State Court could effectually defeat the operation of the bankrupt law passed by Congress by simply providing that any person or corporation if deemed insolvent or incapable of doing business by a State officer, might, under the power of exercising and enforcing police regulations or enactments by the States be wound up and its assets administered upon in the State Courts, notwithstanding such person or corporation might be insolvent and guilty of all the acts of bankruptcy provided for in the general bankrupt law."

In the case of John L. Watson vs. the Citizens' Saving Bank of South Carolina, 11 N. B. R., 161, it is said:

> "We are of the opinion that the jurisdiction of the United States Courts in bankruptcy is an exclusive jurisdiction. That although the State Courts had jurisdiction under their statute, to settle and arrange the affairs and distribute the assets of an insolvent corporation, their jurisdiction is at an end the moment the corporation is adjudicated a bankrupt by the District Court."

It has even been held that where voluntary general assignments for the benefit of creditors are made in conformity with laws which are not treated as "insolvent laws" the proceedings are voidable by the trustee in bankruptcy. *In re* Gutwillig, 90 Fed., 475, (Sou. Dis. of N. Y.), it is said:

> "Voluntary general assignments for the benefit of creditors made in conformity with the laws of the State of New York, though said laws are not treated as 'insolvent laws, within the meaning of the last paragraph of the act of 1898, are voidable by the trustee of the debtor in bankruptcy if made within four months of the adjudication because *incompatible with the purpose and policy of the bankrupt law*, and the rights of creditors thereunder to the appointment of the trustee and the supervision of the assets of bankruptcy; because in fraud of creditors within section 70 of the Act, as the assignment deprives creditors of the important advantages secured to them under the act of 1898; and because if not voidable, the clause of section 3 making such an assignment *ipso facto* an act of bankruptcy will be practically nullified and rendered of no use to creditors."

We may observe in passing, that it appears from this authority, that it is not material as to what the proceeding in the State Court is denominated, whether it be called a general assignment or a receivership, if, as a matter of fact, it is for the purpose of collecting and distributing the assets of an insolvent debtor among his creditors. Under the present law, as changed by the amendment of Feb. 5, 1903, the appointment of a Receiver by the Floyd Circuit Court was an act of bankruptcy, and it was so alleged and set out in the petition. In effect it was the selection by M. Zier & Co. of a trustee for its creditors, notwithstanding the bankruptcy law gives the right to select the trustee to the creditors themselves.

SUMMARY PROCESS.

It must be conceded, in view of the foregoing authorities, (as we understand it is by the learned counsel opposing) that there is no question here of concurrent or co-ordinate jurisdiction between State and Federal Courts. A more difficult situation would be presented if this were not. But it is too well settled to admit of the slightest argument, that the moment the proceedings in bankruptcy were filed by these creditors, on February 6th, 1903, the sole and exclusive jurisdiction over, and right to administer, the property of M. Zier and Company, was lodged in the District Court of Indiana and the Floyd Circuit Court was stripped of all jurisdiction it ever had over it. The jurisdiction of the State Court was ousted; the jurisdiction of the Bankruptcy Court was rendered sole, exclusive and supreme.

But it is contended that orderly procedure and the rule of comity required the Receiver of the Bankruptcy Court to go into the State Court and obtain an order for the delivery of this property; that the suit for a Receiver being rightfully brought in the State Court, that Court retained jurisdiction until it decided in a proper way to relinquish it; that the possession of the Federal Receiver was wrongfully taken, it being without leave of the State Court.

Let us see what state of facts this principle of comity is sought to be applied to? It is established by the evidence and conceded by the parties that this property *was voluntarily delivered over to the United States District Court, by the Receiver of the State Court, without the slightest force or interference.* The evidence shows that Henry E. Jewett, the Vice-president of the New Albany Trust Company, Receiver, and Mr. Watts were convinced at the hearing before the District Court on February 16th and 17th, that the right to the possession of the property was in the District Court.

The evidence further shows that, voluntarily, and with nothing more than a demand, the property was delivered into the possession of the Receiver of that Court.

Mr. Jewett's testimony on this point is without contradiction. (Trans. of Ev., pp. 34 and 35.)

Q. But as the result of that you did come to Indianapolis?

A. Yes.

Q. And you were here on Monday and Tuesday?

A. Monday and Tuesday.

Q. The question of jurisdiction of the courts was argued to this court?

A. Argued to this Court all Monday afternoon.

Q. Any part of Tuesday?

A. Yes, Tuesday morning.

Q. Was Mr. Hester here representing the petitioning creditors?

A. Hester and some other gentlemen; I don't remember his name, of Chicago.

Q. And after that argument you reached a conclusion about the matter, did you?

A. Yes, sir.

Q. And that was that you were to turn over the property to Mr. Connor, Receiver?

A. Yes, sir.

Q. You speaking for the Receiver, you representing the trust company, and Mr. Watts, your attorney also?

A. Yes.

Q. Before leaving here, it was stated by both you and Mr. Watts that you would return to New Albany and turn the property over to Mr. Connor, the Receiver appointed by this Court?

A. He stated that distinctly, and so did I.

Mr. Connor's testimony, also uncontradicted, is as follows (Trans., pp. 4 and 5):

A. After that hearing, I think on the 19th of February, I received a copy of my original order of appointment, with instructions to proceed to the Trust Company and demand that the property be turned over to me. Subsequent to that, however, I had a notice that some arrangement had been made here by which they would turn the property over to me on the 15th or 16th—the 16th I think it was.

Q. You may state whether or not you had prior to that time filed a petition in the Circuit Court of Floyd County to have the property turned over to you?

A. I had.

Q. You had filed that?

A. Yes, sir.

Q. Was that prior to the arrangement made to have a further argument of the question here in this Court?

A. I think it was.

Q. Do you know what was done on your petition?

A. No, I do not. I do not think any action was taken on it. I did not get any order.

Q. You did not get any notice of any action?

A. No, sir.

Q. After that, you may go on and tell what you did about making demand on the Trust Company and whom you saw and what you saw?

A. On the 19th of February, about nine o'clock in the morning, I think, I went to the Trust Company's office and presented a copy of my original order that I received from this Court, from the clerk, to the Secretary of the Trust Company, Fred. Sauer, and demanded the property. He stated that the Vice-president, Mr. Jewett, was not present, but would be in shortly and that he would act upon the matter. I waited there some time and Mr. Jewett came in and I demanded of him the property, and he handed me a document he had received, a petition that he had made to the Floyd Circuit Court and on that a written statement to me, asking me if I could not delay the matter, that he had laid it before the Judge and the Judge had said orally, that he would like for him to hold it in his hands, that he would like for him

to hold it in his hands until he could render his account to that Court, which they would make out the next day or shortly, but if I insisted, that he would turn it, the property, over to me as he had agreed to do in this Court. I insisted and he turned it over to me—gave me the keys.

Q. What he gave you there was the keys to the plant?

A. Yes, sir, the keys to the plant.

Q. If you know, what did that give you access to?

A. That gave me access to the building, the enclosure out there, the property of the plant, and the office books and safe, that was all.

Q. That was all that was turned over to you there at the Trust Company office?

A. Yes, sir.

Q. Just the keys to the plant?

A. Yes, sir.

Q. About what time in the day was that?

A. That was about half-past ten in the morning.

Q. Of what day?

A. 19th.

Q. Do you remember what day of the week that was?

A. I think it was on Thursday.

Q. What did you do after receiving the keys about going to the place and going into the plant, if anything?

A. I took a gentleman named Norton, Mr. Joseph Norton, up there and put him in charge of it as custodian, unlocked the place and took him in and gave him the keys to the front door and told him to take charge of it for me.

Q. That was on Thursday forenoon, you think?

A. Yes, sir.

Q. During that day did your man that you put in charge remain at the place?

A. Yes, sir.

Not only this, but even after it was again violently seized by Kelso, the second Receiver, under the order of the State Court, it was again, voluntarily and without even a request, delivered to the Receiver of the Federal Court (Trans., p. 7).

This being the manner in which the District Court acquired this property, it is difficult to see how the question of comity can be brought into the case. It might be suggested, however, in this connection, that if this rule of comity and orderly procedure obtained at all, it was grossly violated by the State Court when it forcibly, violently and in the night time, retook this property, without the consent or order of the Bankruptcy Court. It is a poor rule that works but one way.

We deny the assertion that this property came into the hands of the Federal Court as a result of threats and intimidation on the part of the District Judge. On the contrary, the record shows that he was extremely patient with these men. They were not, as alleged, "categorically" asked if they would give up this property, under the threat that if they did not do so they would suffer some punishment. For the better part of two days on the 16th and 17th of February, they were allowed, by the District Judge, to argue before him the question of the right of the District Court to act in the matter. Then, after they had admitted that he had exclusive jurisdiction over the property, they were asked whether they would do what they could to avoid an unseemly clash between the two Courts, and to this each of them voluntarily agreed. The finding and order of the Court covering this part of the proceedings, is found on pages 77 and 78 of Exhibit "B" of the record, and reads as follows:

> "This cause coming on to be heard upon the petition of Frederick D. Connor, filed herein on the 16th day of February, A. D., 1903, for the instruction of the Court concerning the property and assets of said M. Zier and Company which are now in the possession of the New Albany Trust Company as Receiver of the Floyd Circuit Court, in a suit therein pending against said M. Zier and Company, because of their insolvency; and the petitioning creditors in this cause and said Connor, receiver as aforesaid, being now present and represented by George H. Hester and William Wil-

hartz, their solicitors, and said New Albany Trust Company, receiver as aforesaid, being now present and represented by Henry E. Jewett, its Vice-president, and by William W. Watts, its solicitor, and after argument by counsel, the said New Albany Trust Company, as receiver of the Floyd Circuit Court, by its said Vice-president having voluntarily offered and agreed, by and with the consent and approval of said William W. Watts, its solicitor, in open court, to surrender full and immediate possession and control of the property and assets of said M. Zier & Company in its possession or under its control as Receiver of the Floyd Circuit Court, to said Connor, as receiver of this Court upon the presentation by him to said New Albany Trust Company of a certified copy of the order for his appointment as receiver heretofore made by the Court. It is now hereby ordered by the Court that said Connor, receiver as aforesaid, forthwith present a certified copy of the order for his appointment as such receiver to said New Albany Trust Company, and immediately thereupon take full possession and control of the property and assets of said M. Zier & Company that are now in the possession or under the control of said New Albany Trust Company as Receiver of the Floyd Circuit Court."

It is said that the District Judge threatened to go to New Albany with a club and that the surrender of this property was coerced by this threat. Even if this be true, if these men (Messrs. Jewett and Watts) believed that the State Court had jurisdiction to retain the possession of this property, there was nothing in the statement to coerce them to give it up. If the District Court was wrong, they had ample protection in the same right of appeal to review its actions they are now exercising. It was to be presumed by them that any erroneous action of the District Court would be reversed by the higher courts. On the other hand, if the District Judge was right in assuming jurisdiction over this property,

and if the law made it his duty to protect the creditors of this bankrupt concern, by taking summary possession of this property, then it was unquestionably his further duty to use whatever force was necessary to carry out his orders and decrees, even though it extended, figuratively speaking, to "the use of a club." This is not the first instance in which Courts have found it necessary to use a club—to employ force—to execute their judgments. It would have been a sad circumstance indeed, if the District Judge believed it was his duty to take summary action to protect these creditors, and then had hesitated because of some other Court's unfounded claim to jurisdiction.

CONSTRUCTIVE POSSESSION.

But granting, for the argument, that it was by means of force or threats that the Bankruptcy Court obtained this property out of the hands of the State Court, and that the Receiver of that Court had no right to turn it over, how does this affect the legality of the possession of the Federal Court? The position of counsel for petitioners, as we understand it, is that under the circumstances, the State Court still had constructive possession of the property and the right to retake it. It is insisted that because of this constructive possession of the State Court, notwithstanding the supreme and exclusive right to the property was in the Bankruptcy Court, the latter could not obtain legal possession except by first applying to the State Court in accordance with the rules of comity and allowing that Court to determine the question of jurisdiction.

It is difficult to see how "constructive possession" by one Court, having *no* "right of possession" can be maintained where there is "actual possession" by a Court that unquestionably has the exclusive "right of possession."

The Willamette Valley, 62 Fed., 2, 393.

The Willamette Valley (C. C. A.), 66 Fed., 565.

Moran vs. Sturgis, 154 U. S., 156-283.

In the Willamette Valley, *supra*, the Receiver had been appointed by the order of the State Court for a steamship and was engaged in its operation. A libel *in rem* was filed in the Federal Court in California, the vessel forcibly seized by the Marshal in the port of San Francisco, and the Receiver of the State Court forcibly ejected. It was held by the District Court (and affirmed by the Court of Appeals) that there being no jurisdiction in the State Court beyond its territorial limits, there was no possession in the State Court, either actual or constructive, after the vessel passed the Oregon State line and that therefore the seizure was lawful.

The above reason is most strongly applicable to the case at bar. Here, the moment the proceedings in bankruptcy were filed the State Court's jurisdiction was terminated and its Receiver became a mere bailee. By turning over the property to one who had the *right of possession*, it did not defeat any of the rights of the State Court.

In the case of Moran vs. Sturgis, 154 U. S., 256, at page 283, it is said on the same subject:

> "As between two Courts of concurrent and co-ordinate jurisdiction, having like jurisdiction over the subject matter in controversy, the Court which first obtains jurisdiction is entitled to retain it without interference, and can not be deprived of its right to do so because it may not have first obtained physical possession of the property in dispute. But where the jurisdiction is not concurrent and the subject matter in litigation in the one is not within the cognizance of the other, while actual or even constructive possession, may for the time being, and in order to avoid unseemly collision, prevent the one from disturbing such possession, *yet where there is neither actual nor constructive possession there is no obstacle to proceeding, and action thus taken can not be invalidated by relation.*"

RECEIVERSHIP OF STATE COURT FRAUDULENT.

It is familiar law, that all proceedings, orders and judgments of a Court which are obtained through fraud, are not only voidable but void *ab initio*. In Black on Judgments, section 293, quoting from Smith vs. Cuyler, 78 Ga., 654, the author says:

> "A collusive judgment is open to attack whenever and wherever it may come in conflict with the rights or the interest of third persons fraud is not a thing that can stand, even when veiled in a judgment."

If, therefore, the receivership in the Floyd Circuit Court was brought about by a collusive arrangement between M. Zier & Co., the defendant and Jos. T. Ryerson the plaintiff, to fraudulently confer on Ryerson & Son and Minnie M. Zier, some advantage over the other creditors of M. Zier & Co., and for the purpose of preventing the creditors from prosecuting their claims in the bankrupt Court, it can not be said that the Floyd Circuit Court *rightfully* acquired this property.

The District Court found that this was a fraudulent proceeding. (R. p. 134.) And the evidence fully justified this conclusion. (Trans., pp. 16 to 26, inc.) It was not the appointment of a Receiver under the equity powers of the Court to preserve property *pendente lite*. The ground alleged for the appointment in the complaint of Ryerson & Son was the insolvency of M. Zier & Co. The estate, as shown by the subsequent proceedings, was to be settled and distributed among the creditors. And this was all done *with the knowledge of all parties that over $13,000 had been paid out by the insolvent, within but a few days before the application was made*, with the object of wrongfully preferring the creditors who brought the suit and a near relative of the defendant. We say, then, that this proceeding *did not make the possession of the State Court rightful*, and that it has not lost any rightful possession.

BANKRUPTCY COURT MAY PROCEED SUMMARILY.

As the point is raised by the petitions herein, we assert, as a proposition of law, that the District Court *did* have power, after the filing of the petition in voluntary bankruptcy, to take the propery of M. Zier & Co. from the possession of the Receiver of the State Court, by summary process. This, we think, is fully sustained by the great weight of authority among the decisions of the District and Circuit Courts of the United States and those of this Court.

In re Smith *et. al.*, 92 Fed., 135, Judge Baker, formerly Judge of the District Court of Indiana, held, that where property was in the hands of a trustee under a voluntary assignment and was *in custodia legis*, it was proper to make an order summarily requiring the assignee to turn the property over to the Receiver appointed by the Bankruptcy Court. Judge Baker, in so holding, says:

> "No question of concurrent jurisdiction, or of the conflict of jurisdiction can possibly arise. The jurisdiction of the Bankruptcy Court is supreme, it is exclusive, and the acts of the State Courts are unauthorized and void, because jurisdiction over the person and estate of a bankrupt is drawn to, and vested exclusively in, this Court by the adjudication of bankruptcy."

So it is held *In Re* John A. Etheridge Furniture Co., 92 Fed., 329, by Judge Barr, of the District Court of Kentucky, wherein a summary order was granted upon petition of the Receiver in bankruptcy requiring the assignee of the State Court to turn the property over to the Receiver of the Federal Court. Judge Barr said:

> "Sub-section B of Section 71, provides: 'Proceedings commenced under State insolvency laws before the passage of this Act shall not be affected by it.'

> This would clearly indicate that proceedings commenced after the passage of the bankrupt act can not be effectual to prevent the administration of a bankrupt's estate in bankruptcy. To allow the bankrupt to select the trustee to administer upon his estate, instead of the creditors, as provided by the bankrupt act, or to allow the State Court to take jurisdiction of the estate of a bankrupt, and administer and distribute it, would effectually destroy the efficiency of any bankrupt act that might be enacted by Congress, and thus effectually destroy the power granted to Congress to pass a bankrupt act."

A very instructive case on this subject is that of *In Re* Tune, 155 Fed., 903. Here logs were in the possession of a constable under execution issued by a Justice of the Peace. Voluntary bankruptcy proceedings were commenced and a Receiver appointed. The District Court issued an injunction forbidding the prosecution of the attachment suit in the Justice's Court, restrained the constable from making any sale of the property and required it to be turned over to the Receiver in bankruptcy. The Court said, on page 916:

> "It is said that comity prevents one Court from interfering with property in the possession of another Court. This is a wise and salutary rule repeatedly enforced by the Supreme Court of the United States and respected by all lovers of law and order. No one bows to the rule more profoundly than does the writer of this opinion. *But the question is not one of comity or of concurrent jurisdiction. It is a question of the supremacy of the Constitution and laws of the United States* to which State and Federal Courts alike must bow. It is no new thing in our jurisprudence for a State Court which had concurrent jurisdiction of the subject matter with the Federal Court and first obtained jurisdiction, to lose that jurisdiction and have that jurisdiction by operation of 'the supreme law of the

land' vested exclusively in the Federal Court, which enforces the transfer of the *res* into its own custody. Our removal laws are familiar instances of the loss of jurisdiction by one Court after that Court has acquired such jurisdiction and the gain of its jurisdiction by another Court. The sections of the act cited inevitably give the District Courts of the United States the exclusive jurisdiction to administer the estate of an insolvent as against liens and attachments acquired against insolvents by legal proceedings, at any time within four months prior to the filing of the petition with exceptions named not here material if he had been adjudged bankrupt."

The most recent judicial expressions on the subject of summary process by Courts of Bankruptcy, in the opinions of this Court, have been to the same effect. There are but two exceptions to this rule laid down in the later decisions of this Court, but neither of them is applicable to the facts in this cause. They are: First—where the possession is held under a claim of title adverse to the bankrupt estate. Second—where the claim is under a lien which attached more than four months prior to the filing of the petition in bankruptcy.

In the case of White v. Schloerb, 178 U. S., 542, after adjudication in bankruptcy, an action in replevin was brought in the State Court against the bankrupt, to recover property claimed by the bankrupt at the time of the adjudication and then in the possession of the referee in bankruptcy. The District Court sitting in bankruptcy was held, under these circumstances, to have jurisdiction, by summary proceedings, to compel the return of the property seized. In the course of the opinion by Mr. Justice Gray, it is said:

> "The questions certified, concern not the trial of the title to these goods, but the judicial custody and lawful possession of them. . . . At the date of this adjudication in bankruptcy by the District Court of the United States, the goods were in the store of bank-

rupts, and in their actual possession, and were claimed by them as their property. On the same date, that Court referred the case to a referee in bankruptcy and by his direction the entrance to the store was locked. The goods were then in the lawful possession of and custody of the referee in bankruptcy, and of the bankruptcy court, whose representative and substitute he was. Being thus in custody of a Court of the United States, they could not be taken out of that custody upon any process from the State Court."

"So far as regards this point, the decision of this Court in Freeman v. Howe, 4 Fed., 450, more than covers the case. It was there adjudged that property taken and held by a marshal on a writ of attachment from a Court of the United States, directing him to attach the property of one person, could not be taken from his possession on a writ of replevin from a State Court in behalf of another person who claimed the attached property as his own." . . .

"Not going beyond what the decision of the case before us requires, we are of the opinion that the Judge of the Court of Bankruptcy was authorized to compel persons who had forcibly and unlawfully seized and taken out of the judicial custody of that Court property which had lawfully come into his possession as part of the bankrupt's property, to restore that property to its custody; and, therefore, our answer to the first question must be 'the District Court sitting in bankruptcy had jurisdiction by summary proceedings to compel the return of the property seized.'"

In Bryan v. Bernheimer, 181 U. S., 188, there was a summary petition to the District Court sitting in bankruptcy for an order on the marshal to take possession of the property of the bankrupt, which was then in the hands of a third party. A general assignment was made by one Abraham of his property consisting of a stock of goods to one Davidson, who had the assignment recorded, filed an inventory and

took possession of the property. Nine days afterwards, a petition in involutary bankruptcy was filed against Abraham, and on December 12, 1898, he was declared a bankrupt. On the same day the petitioning creditors presented to the District Court a petition showing that the assignee was disposing of the property and asking that an order directing the marshal to take the property then in the assignee's possession. This was done. The petitioning creditors then filed another petition showing that the assignee had turned over to one Bernheimer the stock of goods worth about $10,000, with knowledge on the part of Bernheimer of the proceedings in bankruptcy. A summary order was issued by the Court against Bernheimer to turn over this property to the Receiver of the Bankruptcy Court.

In the opinion of the Court, on page 195, it is said:

> "The act of Congress was designed to secure the possession of the property of the bankrupt, so that it might be administered under the proceedings in the bankrupt court. Between the first steps initiating proceedings in the bankrupt court and the appointment of the assignee, a considerable time often passes. During that time, the property of the bankrupt, especially in a case commenced by creditors, may be surreptitiously conveyed beyond the reach of the court or of the assignee, to whose possession it should come when appointed. If the bankrupt does not voluntarily aid the court, or is inclined to defeat the proceedings, he can, with the aid of friends or irresponsible persons, sell his movable property and put the money in his pocket, or secrete his goods or remove them beyond the reach of his assignee or the process of the court, and defy the law. The evidence in this case shows the manner in which this can be done. It was the purpose of the act of Congress to prevent this evil. It therefore provides that, as soon as the petition in bankruptcy is filed, the court may issue to the marshal a provisional warrant directing him to take pos-

session of the property and effects of the bankrupt and hold them subject to the further order of the court. To have limited this right or duty of seizure to such property as he might find in the actual possession of the bankrupt would have manifestly defeated in many instances the purposes of the writ. There is, therefore, no such limitation, expressed or implied. As in the writ of attachment, or the ordinary execution on a judgment for the recovery of money, the officer is authorized to seize the property of the defendant, wherever found; so here it is made his duty to take into his possession the property of the bankrupt wherever he may find it. It is made his duty to collect and hold possession until the assignee is appointed or the property is released by some order of the court, and he would ill perform that duty if he should accept the statement of every man in whose custody he found the property which he believed would belong to the assignee, when appointed, as a sufficient reason for failing to take possession of it. Sharp v. Doyle, 102 U. S., 686, 689, 690. A like decision was made in Feibelman v. Packard, 109 U. S., 421."

A still later decision of this Court on the right of the Bankruptcy Court to recover property from the hands of third persons by summary proceedings is found in the case of Mueller v. Nugent, 184 U. S., 1. In this case, after Nugent was declared a bankrupt, an injunction was issued against his son, William T. Nugent, to restore assets of the estate amounting to $14,435.45. Afterwards he was ordered to pay said sum to the trustee in bankruptcy. He failed to do this, was adjudged in contempt of Court and was committed to prison by the District Court until he should pay to the trustee said sum of money. After reviewing and approving the cases of White v. Schloerb and Bryan v. Bernheimer, *supra*, and after criticising the holding in the case of Bardes v. Hawarden Bank, *supra*, this Court reversed the Circuit Court of Appeals and held, that it was competent to deal with Nu-

gent in a summary way by committing him to prison for contempt, until he should pay over the money in his possession belonging to the bankrupt.

The very latest expression of this Court on the subject is in the case of Clark v. Larramore, 23 Sup. Court Rep., 363, decided Feb. 23, 1903. In this case the right of a District Court sitting in bankruptcy to issue summary process to obtain possession of property in the hands of an officer of the State Court, is reaffirmed. A stock of goods belonging to the insolvent was levied upon and sold by the sheriff under an execution issued out of the Supreme Court of the State of New York. Afterwards, and before a sheriff had returned the execution or paid the money, a petition in involuntary bankruptcy against the debtor was filed in the United States District Court for the Southern District of New York and an order made by the District Judge restraining the sheriff from paying the money to Clark. The debtor was afterward adjudged a bankrupt and a further order was entered by the District Judge directing the sheriff to pay the money to the trustee in bankruptcy. The Court of Appeals decided that the District Court had this power and that judgment was affirmed by this Court.

The learned counsel for petitioners rely wholly for the support of their position on cases, all of which come under one or the other of the exceptions hereinbefore mentioned, namely: Where the property sought to be obtained by the District Court is held under an adverse claim of title; or, where it is held under a lien which attached more than four months prior to the bankruptcy proceedings.

The case of Peck v. Jenness, 7 How., 611, under the bankruptcy act of 1841 was in force, and decided only that where there was a claim to property *adverse* to the title of the estate involved, the District Court did not have the power to summarily take the property into its own jurisdiction.

The case of Bardes v. The Bank, 178 U. S., 524, held that the District Courts, as such, had no jurisdiction over a suit brought by a trustee to recover property from a stranger to the proceedings, held adversely by him, unless by his consent.

This case is no longer the law. It is made ineffective by the amendment of 1903 which confers jurisdiction in actions of this character concurrently on the District and State Courts.

The case of Eyster v. Gaff, 91 U. S., 521, decided that where the party proceeded against was an *adverse claimant*, in the broad sense of the words, he should not be asked to respond to a petition, or order to show cause, or motion, issued summarily by the District Court. This decision was under the law of 1867.

The case of Metcalf v. Barker, 23 Sup. Court Rep., 67, decided Dec. 1, 1902, and so strongly relied on by the learned counsel for the petitioners, is likewise not in point here. The question decided by the Court in that case was, that, where a lien had attached, under a judgment of the State Court, to the bankrupt's property more than four months previous to the commencement of the proceedings in bankruptcy, under the provisions of section 67f of the Act of 1898, it should remain in full force and effect. It is admitted that there is no question of prior lien in the case at bar. This case has since received some consideration by this Court, in the case of Clark v. Larramore, *supra*, in the following language by Mr. Justice Brewer:

> "The contention of the petitioner is that the sheriff having sold the goods levied on before the filing of the petition in bankruptcy, the proceeds of the sale was not the property of the plaintiff in execution and not of the bankrupt at the time of an adjudication and a trustee therefore has no title to the sale.'
>
> "This contention can not be sustained. The judgment in favor of petitioner against Kenney was not like that of Metcalf Bros. v. Barker, 187 U. S., 165, only giving the effect to a lien theretofore existing, but one which with the levy of an execution issued thereon created a lien; and as judgment, execution, and levy were all made within four months prior to the filing of the petition in bankruptcy, the lien created thereby became null and void on adjudication in bankruptcy."

Further on in the opinion, it is said:

> "A different question might have arisen if the writ had been fully executed by the payment to the execution creditor, whether the bankruptcy proceedings would so far effect the judgment and execution and that which was done under them as to justify a recovery by the trustee in bankruptcy for the execution creditor as a question not before us, may depend on many other considerations. It is enough now to hold that the bankruptcy proceedings seized upon the writ of execution while it was still unexecuted and released the property which was held under it from the claim of the execution creditor."

The case referred to by counsel for petitioners of the Louisville Trust Company v. Commingore, 184 U. S., 18, is also a case involving an *adverse* claim. The general assignee in this case was held not to be strictly an assignee or agent of the Company, but rather an individual having acquired title lawfully and without notice and he was constructively, if not actually, *an adverse claimant.*

We think, therefore, that the chain of precedents supplied by the Supreme Court in the cases of White v. Schloerb, Bryan v. Bernheimer and Mueller v. Nugent, and Clark v. Larramore, settle beyond question the doctrine that summary process may be issued by a bankruptcy Court, irrespective of the amendment of 1903, under all circumstances, except where there is a claim of adverse interest, or where there is involved the enforcement of a lien which attached more than four months prior to the adjudication in bankruptcy. And now since the amendment of 1903, which gives the District Court the right to try preferences and adverse claims by a plenary suit, it seems that even the question of adverse claim is eliminated as an exception to the right to exercise this power.

SUMMARY ACTION AGAINST RECEIVER OF STATE COURT.

It is difficult to see how there can be any difference between the right of the Bankruptcy Court to issue summary process to obtain property in the hands of an assignee or third persons and the right to issue such process to obtain property held by a Receiver of a State Court. This is especially true in view of the facts of this case, for in reality the receivership proceeding of Ryerson & Son against M. Zier & Co., in the Floyd Circuit Court, was in all of its important respects a voluntary assignment. The petition filed for the appointment of this Receiver alleged that M. Zier & Co. was insolvent and that, unless a Receiver was appointed, its property would be dissipated. M. Zier, Vice-president and general manager of the corporation, selected the New Albany Trust Company as Receiver. This Receiver, or trustee, was proceeding to wind up the affairs of the estate. Under the law of the State of Indiana, there is no discharge from indebtedness under the voluntary assignment act. The trustee in such a proceeding is under the immediate direction and order of the Circuit Court. He may be removed by the Court; he can not do any legal act without the sanction of the Court; the claims against the estate are allowed by the Court and the Court distributes the proceeds. Burns' Annotated Statutes 1901, Secs. 2899 and 2912, inclusive.

Under these circumstances, we can not understand what difference there was between the character of these proceedings and the settlement of an estate under the voluntary assignment law.

"IN CUSTODIA LEGIS."

Property held by a sheriff under a writ of attachment or execution is as much *in custodia legis* as if held by a Receiver appointed either under the statutory or equity power of a Court. In Vol. 8 Am. & Eng. Ency. of Law, 532, under the title "Custody of the Law," it is said:

> "Whenever property has been seized by an officer of the Court by authority of its process, the property is to be considered in the custody of the Court and under its control for the time being; and no other Court has a right to interfere with that possession unless it be some Court which may have a direct supervisory control over the Court whose process has first taken possession, *or some superior jurisdiction in the premises.*"

In discussing the general rule that where property is in the possession of one Court of "concurrent" jurisdiction, such possession can not be disturbed by process out of another Court, it is said by this Court in the case of Coyal v. Heyman, 111 U. S., 176:

> "The point of the decision in Freeman v. Howe, *supra*, is that where property is taken and held under process, mesne or final, of a Court of the United States, it is in custody of the law, and within the exclusive jurisdiction of the Court from which the process has issued, for the purposes of a writ; that the possession of the officer can not be disturbed by process from any State Court, because to disturb that possession would be to invade the jurisdiction of the Court by whose command it is held, and to violate the law which that jurisdiction is appointed to administer; that any person, not a party to a suit or judgment, whose property has been wrongfully, or under color of process, taken and withheld may prosecute, by ancillary proceedings, in the Court whence the process issued, his remedy for restitution of the property or its proceeds while remaining in the control of that Court."

And, continuing on in the opinion, it is said:

> "And, *vice versa*, the same principle protects the possession of property while thus held, by process issuing from the State Court against and disturbance under

process of the Courts of the United States; *excepting, of course, those cases where the latter exercise jurisdiction for the purpose of enforcing the supremacy of the Constitution and of the laws of the United States.*" Porter v. Sabin, 149 U. S., 473."

But we are not without many respectable authorities holding that the Bankruptcy Court has the inherent power to issue summary process against the Receiver of a State Court to obtain possession of property belonging to the bankrupt's estate.

In the case of Moran v. Sturgis, 154 U. S., 256, a Receiver was appointed by the Supreme Court of New York to take charge of certain steamships. Afterward libels in admiralty in the District Court of the United States were issued and the marshal seized the boats. The proceedings in the State Court being first instituted, it was held that the Receiver, though he did not first obtain actual possession, he *did have constructive possession of the property when the marshal seized it.* And yet it was held by this Court that the District Court in admiralty had power to summarily take the property notwithstanding its possession by the Receiver of the State Court.

In re Merchants Insurance Co., 6 N. B. R., 43, decided by Judge Blodgett, formerly of the Seventh Circuit, is another case where it was held that this power resided in a Court of Bankruptcy. In this case, prior to the filing of a petition in involuntary bankruptcy, suit had been begun in the State Court of Illinois to dissolve the Merchants Insurance Company and a Receiver of the Company had been appointed in that suit. The question was whether or not the United States Court in Bankruptcy was justified in ordering its Receiver to take possession of the property, notwithstanding it was then in the possession of the Receiver of the State Court. It was held, squarely, that it was.

In upholding the same rule, Judge Bond, in the case of John L. Watson v. The Citizens' Bank of South Carolina, 11 N. B. R., 161, held:

"We are of the opinion that the jurisdiction of the United States Courts in Bankruptcy is an exclusive jurisdiction; that, although the State Courts have jurisdiction under their statutes to settle and arrange the affairs and distribute the assets of an insolvent corporation, their jurisdiction is at an end the moment the corporation is adjudicated a bankrupt by the District Court."

CONNOR'S PETITION TO THE STATE COURT.

With a view to observing the rule of comity and orderly procedure and to avoid a clash of jurisdiction between the Courts, before making any demand or attempting in any way to gain possession of the property, under the direction of the District Court, Mr. Connor, as Receiver, filed in the State Court in the suit in which the Receiver was appointed, an intervening petition, in which he recited the fact of his appointment and asked that the New Albany Trust Company be ordered to deliver the property to him. (R., p. 173.)

It can not be assumed that this intervention in the State Court was in any sense an admission of the right of that Court to exercise any jurisdiction over this property or even to pass on the question of whether it had jurisdiction or not. Its sole function was to apprise and inform the State Court of its duty to at once order the delivery of the property to the United States Receiver to avoid any unnecessary and unseemly conflict. In this act, as we contend, the Receiver of the District Court observed, to its fullest requirement, the rule of comity so much contended for by learned counsel for the petitioners. This was the only means by which the Federal Receiver could notify the Court of his appointment and give it an opportunity to release the property. And yet it is said by counsel that, by doing this, the Receiver became a party to the proceedings in the State Court and was bound to await its judgment. The authority referred to, of *in re* Lengert, 109 Fed., 927, is an approval of

the action of the Federal Receiver in this respect and holds, only, that the State Court should be apprised of the action of the District Court in appointing the Receiver, in order that it might order the property delivered. The Court held that the bankruptcy act gave exclusive jurisdiction to the United States Court in such matters and ousted the State Court of all jurisdiction therein. The language of the opinion on the subject of applying to the State Court for possession is as follows:

> "The Receiver of this Court is, therefore, entitled to the custody of the property, but in view of the comity which exists between the Federal and State Courts and the fact that a Receiver is an officer of the State Court and acts under its immediate direction, application should be made to it for a proper order in the case. *In re* Lesser, 3 Am. B. R., 815, (100 Fed., 133. Affirmed 5 Am. B. R., 329. In the meantime the Receiver in the State Court will be restrained from disposing of the property in any way. When the property is delivered to the Receiver of this Court, the sheriff may apply here for the allowance of his reasonable disbursements."

It being conceded that the jurisdiction in the United States Court, upon the filing of the petition in bankruptcy, was exclusive, and that the State Court was stripped of all its jurisdiction, then it must inevitably follow that the State Court had no power even to hear and determine the question of whether it would or would not relinquish the property. It became the duty of the State Court to turn the property over to the Federal Receiver at once, upon being informed by the intervening petition of the bankruptcy proceedings; and every step taken thereafter with reference to the property and its custody, the appointment of Kelso and the proceedings taken to regain the property forcibly, was *coram non judice*. It was not required, therefore, that the Federal Receiver should wait until it suited the convenience of the Floyd Cir-

cuit Court to pass upon his petition. The action of the State Court, as shown by the record, in contemptuously ignoring the petition and continuing it until the next term, is strongly indicative of what its course would have been in regard to this property. No rule of comity can so far override the Constitution and laws of the United States, giving jurisdiction to the District Courts in cases of this kind, as to require that it should do any more than it has done in this case.

AMENDMENT OF FEBRUARY 5th, 1903.

By the amendment of Congress to the bankruptcy act (Sec. 4, Cl. 3) approved and in force February 5, 1903, (the day before the petition herein was filed), the act of M. Zier & Co. in applying for a Receiver is made an act of bankruptcy.

On the question of whether this amendment applies to the proceedings in this cause, in the State Court, (confessing our inability to improve on his reasoning), we desire to quote somewhat at length from the opinion of the District Judge in this case. Judge Anderson said (R. p. 155):

> "It has been said that if the amendment of February 5, 1903, had been in force when this State Court receiver was appointed, that then, following the analogy of the voluntary assignment cases, the Receiver appointed by this Court would have the power summarily to take charge of the property. But it is maintained that the amendment of February 5, 1903, was not in effect, so far as any act of bankruptcy, prior to the time of its passage, is concerned. This amendment took effect on February 5, 1903. On February 6, 1903, these proceedings in involuntary bankruptcy were commenced. Shortly after the original petition was filed, an additional petition, or an additional cause was alleged in a supplemental petition filed under this amendment, reciting the fact that a receiver had been

appointed in the State Court at New Albany for M. Zier & Company. The question now, is, whether or not after the passage of this amendment, the appointment of a receiver, or the having suffered a receiver to be appointed within four months prior to that time, constituted an act of bankruptcy? It has been said that the question here is whether or not that amendment has a retroactive effect. It is well understood that Congress had the power to pass retroactive laws if it sees fit. The question then, is, whether or not Congress clearly intended the amendment to be retroactive in this respect.

"In the original act it was specifically provided that the act should go into force and effect on the first day of July, 1898. It was further provided that no petition for voluntary bankruptcy should be filed within one month, and no petition for involuntary bankruptcy should be filed within four months thereafter. When this amendment was made, no such provision was put into it, and the last clause of it, the last section of it provides:

"'The provisions of this amendatory act shall not apply to bankruptcy cases pending when this act takes effect, but such cases shall be adjudicated and disposed of conformably to the provisions of the said act of July first, eighteen hundred and ninety-eight.'

"To my mind the fact that in the original act it was provided that no petition for voluntary bankruptcy could be filed within one month of the taking effect of the act, and that no petition for involuntary bankruptcy could be filed within four months of its taking effect, while in the amendatory act there is no postponement of the time, clearly indicates that Congress intended by its provisions to apply to any act of bankruptcy defined by its terms committed within four months prior thereto. It seems plain that when Congress passed this amendment and made no provision

for the postponement of its effect, that it intended that it should go into effect immediately.

"Not only that, but the wording of the amendment is very suggestive. The original act provides: 'Acts of bankruptcy by a person shall consist of his having . . . or (4) made a general assignment for the benefit of his creditors.' Now this fourth sub-division is amended as follows: 'Or (4) made a general assignment for the benefit of his creditors, or being insolvent, applied for a receiver or trustee for his property because of insolvency, a receiver or trustee has been put in charge of his property under the laws of a State, of a territory, or of the United States.' If it was intended that that amendment should have only a prospective effect, why didn't the act say 'a receiver or trustee shall be put in charge of his property under the laws of a State, of a territory or of the United States?'"

If this be the true construction of the effect of the amendment, then all of the many decisions of this Court herein cited, holding that the Bankruptcy Court may summarily wrest property, belonging to a bankrupt, from a trustee under a voluntary assignment in a State Court, are applicable, with equal force, to the facts in this case. The District Court could very properly, then, have taken the summary action it is claimed to have taken to obtain this property, and its possession be proper and legal.

In any view of the case, a valid order of the lower Court has been wilfully violated. Its rightful authority has been assaulted, and it has been treated with the utmost contempt. The evidence shows that both the petitioners are guilty. Their only natural defense would seem to be, that they acted as they did, believing the law was with them. They do not justify on any such ground. Practically admitting the facts set out in the charges of contempt, they defend solely on the lack of jurisdiction of the District Court. Under circum-

stances like these, the finding and judgment of the Court was fitting and proper.

We ask, therefore, that the proceedings below be sustained and that the petitions for writ of *habeas corpus* be denied.

GEORGE H. HESTER,
WILLIAM WILHARTZ,

Counsel for Frederick D. Connor, Receiver in Bankruptcy, and Inland Steel Company, John C. Thurston and John Dey, Petitioning Creditors, and other creditors.

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Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

WILLIAM W. WATTS AND DAVID A. Sachs, Petitioners, v. THE UNITED STATES, HENRY C. Pettit, United States Marshal for the District of Indiana, and Robert Metzger, Sheriff of Marion County, Ind.	Nos. 15 and 16, Original.

ON HABEAS CORPUS AND CERTIORARI TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

BRIEF FOR THE UNITED STATES.

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STATEMENT.

It is argued on behalf of petitioners that even if the District Court acquired jurisdiction over the property of M. Zier & Co., by virtue of the bankruptcy proceedings in that court, it had no right, by summary process, to disturb the possession of the State court; and hence the contempt proceedings to enforce its jurisdiction were void.

Assuming the proposition of counsel to be correct, and that the rule of comity forbids a United States court, sitting in bankruptcy, from summarily seizing property over which it has acquired jurisdiction out of the hands of a State court, the answer is that we have here no such case. A careful examination of the record will convince the court that the District Court did not take, or attempt to take, summary possession of the property in the hands of the State court, but, on the contrary, duly observed all the requirements of the rule of comity.

The circumstances out of which these contempt cases arose are only partially set forth in the petitions and the briefs for petitioners. A complete statement of the material facts, as they appear from the record, is therefore essential to a correct understanding of the situation.

On December 30, 1902, Joseph T. Ryerson & Son, a corporation of Illinois, by W. W. and J. R. Watts, their attorneys, filed a complaint in the Circuit Court of Floyd County, Ind., in which it was alleged, in substance, that the defendant, M. Zier & Co., a corporation of Indiana, was indebted to them and others for various amounts; that said defendant was *insolvent* and unable to meet its obligations, and that its creditors were threatening to enter suits against it, in which event its property and assets (consisting principally of a boiler manufacturing plant at New Albany, then in operation and engaged in filling unfinished orders and completing unfinished contracts) would be dissipated and materially injured. It was therefore prayed that a receiver

be appointed and that the court "make such orders as shall be necessary for the preservation of said property for the continuance of said business *for the purpose of completing unfinished contracts*, and such other and further orders as the court shall deem necessary and proper." (Petitioners' Exhibits, pp. 1–8.)

On the same day, "at chambers, in vacation," the Floyd Circuit Court entered an order which recited the appearance of the defendant, M. Zier & Co., by M. Zier, its president, and Jewett & Jewett, its attorneys, and appointed the New Albany Trust Company receiver of the property of said company, such receiver immediately qualifying and taking possession. (Petitioners' Exhibits, pp. 12, 13.)

On the 24th day of January, 1903, pursuant to a request of the receiver and an order of the court (Petitioners' Exhibits, p. 34), a creditors' meeting was held in open court for the purpose of considering the advisability of continuing the operation of the plant of M. Zier & Co. Upon that hearing it was ordered by the court that *the receiver should go on and complete all unfinished contracts*, and that he might purchase the necessary material for this purpose, *but should make no new contracts*. It was further ordered that all creditors and other persons should be and they were thereby enjoined from prosecuting any claim or suit against the estate except by intervention in that cause or by leave of the court. (Petitioners' Exhibits, pp. 37–41.)

It may be here noted that the District Court, upon its investigation of the subject, found that this order of

the Floyd Circuit Court enjoining all creditors from proceeding in any other court, was prepared and procured by the petitioner Watts without the knowledge of any other creditor or his representative. (Petitioners' Exhibits, pp. 135-136.) The judge of the Floyd Circuit Court himself testified, in the contempt cases, that this order was prepared by Watts and was not read or discussed at the creditors' meeting. (Transcript of Evidence, pp. 66–67.) See also Charles L. Jewett's testimony. (Transcript of Evidence, p. 54.)

On February 6, 1903, the Inland Steel Company, which had been represented at the creditors' meeting in the Floyd Circuit Court on the 24th of January, and two other creditors who had not been so represented, filed their petition in involuntary bankruptcy against M. Zier & Co. in the District Court of the United States for the District of Indiana. (Petitioners' Exhibits, p. 66.) That petition set forth the fact that M. Zier & Co. were indebted to the petitioners in excess of the statutory amount required to give the District Court jurisdiction; that the defendant company was insolvent, and that within four months next preceding the date of filing the petition it had committed certain acts of bankruptcy, as follows:

> *First.* Your petitioners allege upon information and belief that said M. Zier & Company did heretofore, to wit, on divers dates within four months last past, while insolvent, transfer to the firm of Joseph T. Ryerson & Son, of Chicago, and to Minnie M. Zier, of Minneapolis, Minnesota, creditors of said M. Zier & Company, certain portions of the property of the said

M. Zier & Company, with intent to prefer said creditors over and above the other creditors of said M. Zier & Company, the aggregate value of said property amounting at least to the sum of Five Hundred Dollars.

Second. That the said M. Zier & Company did, on divers dates within four months last past, while insolvent, transfer divers other portions of its said property to divers other persons, who were then and there creditors of said M. Zier & Company, and especially to Minnie M. Zier, with intent to prefer such persons over and above the other creditors of M. Zier & Company.

The petition further alleged that M. Zier & Co. had on hand a large stock of merchandise, machinery, and tools, and a large number of outstanding accounts; that under certain proceedings in a State court a receiver for said corporation had been appointed who was attempting to collect the assets of said estate and incurring expenses which must be borne by the creditors thereof; and that it was absolutely necessary for the preservation of said estate that a receiver in bankruptcy should be appointed forthwith.

Upon this petition the District Court issued an order directing M. Zier & Co. to appear in that court, as a court of bankruptcy, to be held at New Albany, on the 28th day of February, 1903, to show cause why the prayer of the petition should not be granted. (Petitioners' Exhibits, p. 69.) A copy of this order was duly served on the defendant company. (Petitioners' Exhibits, p. 71.)

Afterwards, on February 11, 1903, the Inland Steel Company filed another petition in the District Court (Petitioners' Exhibits, p. 71), in which, referring to the previous petition, it was said:

> That it is alleged in said petition that Joseph T. Ryerson & Son and other creditors therein mentioned have received certain preferences from said alleged bankrupt within four months prior to the filing of said petition, contrary to the statute in such case made and provided, while said bankrupt was insolvent; that at the instance of said Joseph T. Ryerson & Son a receiver has been appointed by the Floyd Circuit Court of Floyd County, Indiana, to take charge of the assets of said alleged bankrupt; that the New Albany Trust Company is the receiver so appointed, and that Henry E. Jewett, who is the attorney for said M. Zier & Company, is also the Vice-President of said New Albany Trust Company; that said receiver is now running the business of M. Zier & Company and is completing certain contracts, and for that purpose has employed a large number of men in the manufacturing establishment of said M. Zier & Company and has placed in charge of said plant one Michael Zier, who is the Vice-President and Treasurer of said alleged bankrupt; that said Michael Zier is wholly incompetent for said business; that he is wholly unfamiliar with bookkeeping and necessary office work, which is essential to the safe conduct of said business, and your petitioner avers that if said receiver is permitted to remain in charge that it would result in injury and detriment of such of the

general creditors of said M. Zier & Company who are entitled to participate in said bankrupt estate.

Your petitioner further states that W. W. and J. R. Watts, Attorneys at Louisville, Ky., are the attorneys for said Joseph T. Ryerson & Son in said proceedings wherein said New Albany Trust Company was appointed receiver and that said W. W. and J. R. Watts are also the attorneys for said receiver, and your petitioner fears that said receiver is friendly to said Joseph Ryerson & Son and to said alleged bankrupt to the detriment of the creditors at large of the said alleged bankrupt.

Your petitioner further alleges that it is absolutely necessary for the preservation of said estate for the benefit of all of the creditors who shall be entitled to participate therein that a receiver in bankruptcy be appointed herein forthwith to take charge of all of the assets of such alleged bankrupt and administer the same under the directions of this honorable court, with the usual powers of receivers in such cases. Wherefore your petitioner prays that a receiver in bankruptcy be appointed forthwith, and that such other and further orders be entered herein as to your honor shall seem meet and proper.

On the same day, the Inland Steel Company filed a further and supplemental petition, showing more specifically that the New Albany Trust Company had actually taken charge of the property of M. Zier & Co. as receiver. (Petitioners' Exhibits, p. 75.)

Upon these petitions an order was entered by the District Court, which, after setting forth that the Inland

Steel Company had filed "its verified petition alleging that an emergency exists for the immediate appointment by the court of a receiver herein to take charge of the property and effects of M. Zier & Co. pending the hearing of said petition, and the appointment of a trustee in bankruptcy herein," stated that "the court being advised, after due consideration, now finds that the prayer of said petition ought to be granted." That order further provided for the appointment of Frederick D. Connor as receiver, with authority to take possession of the property of M. Zier & Co. upon giving bond in the sum of $10,000, and directed the New Albany Trust Company to deliver up all of the property of M. Zier & Co. in its possession to its receiver, Connor, and to refrain thereafter from interfering in any way with his possession and control. (Petitioners' Exhibits, p. 74.)

The District Court did not, however, undertake summarily to enforce this order or direct its receiver summarily to seize the property in question out of the hands of the receiver of the State court. On the contrary, no action was taken under the order of February 11, until the 14th, when Connor, by direction of the District Court, filed a petition in the State court showing his appointment, and praying that court for an order requiring the New Albany Trust Company *immediately* to turn over to him the property in its hands as receiver of M. Zier & Co. (Petitioners' Exhibits, pp. 173–174.)

Upon this petition the Floyd Circuit Court, on the same day, entered an order stating that "*the matter of*

said petition is now continued until the next term of this court." (Petitioners' Exhibits, p. 53.)

On the same day the New Albany Trust Company, by W. W. and J. R. Watts, its attorneys, also filed a petition in the State court. (Petitioners' Exhibits, pp. 41–49.) That petition set forth the proceedings by the Inland Steel Company and other creditors in the District Court, resulting in the appointment of Connor as receiver, and stated that, with a view to avoiding a clash of jurisdiction, petitioner had caused its attorneys to communicate by telephone with Judge Anderson of the District Court, and to urge that his order appointing such receiver should not be enforced until after said matters had been presented to the State court with the request that the State court direct it and its attorneys to lay the same before the District Court, whereupon, the petition stated, Judge Anderson requested petitioners' counsel to notify Mr. Hester, the attorney for the Inland Steel Company, that the matter might be heard on Monday, February 16, 1903, at Indianapolis, and that in the meantime the order appointing Connor as receiver was not to be enforced. Petitioner then requested that it be instructed with respect to the estate in its hands pending the controversy and the adjournment of the court, and that it be directed to present the facts in the matter to the District Court, either by limited or general appearance in the suit in bankruptcy instituted therein by the Inland Steel Company, and ask such relief, if any, as the State court might direct. The petition further prayed that the

Inland Steel Company and the other petitioning creditors in the bankruptcy suit in the District Court, and Frederick D. Connor, receiver and individually, and Henry U. Pettit, marshal of the District Court, "be enjoined and restrained from in any suit, summary process or otherwise, or in any manner attempting to or ousting or taking from this receiver the possession of said estate, except by intervention herein and proper orders entered in this cause." (Petitioners' Exhibits, pp. 41–49.)

Upon this petition the Floyd Circuit Court, on the same day, February 14, issued an order enjoining the Inland Steel Company, and the other petitioning creditors, Connor, individually and as receiver, and the marshal of the District Court, as prayed. That order further provided that the New Albany Trust Company, through its attorney, should proceed to Indianapolis,

> and there, by a limited appearance and by protestation against appearance only, by petition upon such appearance only, lay before said District Court of the United States for the District of Indiana the facts with regard to the matters herein, said injunction, restraining order, and said estoppels, and to suggest to said court the orders of this court and the fact that had it been fully informed, as is believed by this court, its order with respect to the assets herein would at the most have been a direction to make an application to this court at the proper time and in the proper way for delivery of the said assets to such District Court's receiver or

trustee after proper disposition and settlement of the matters herein.

It was further ordered that the Inland Steel Company and the other petitioning creditors in the bankruptcy suit in the District Court appear and show cause why they should not be punished for contempt in disobeying the orders of the Floyd Circuit Court by prosecuting said suit. (Petitioners' Exhibits, pp. 50–53.)

On February 16, the New Albany Trust Company, through Henry E. Jewett, its vice-president, and William W. Watts, its attorney, appeared before the District Court at Indianapolis. The result is stated in the order of the District Court made the next day, February 17, as follows (Petitioners' Exhibits, p. 77):

> This cause coming on now to be heard upon the petition of Frederick D. Connor, filed herein on the 16th day of February, A. D. 1903, for the instruction of the court concerning the property and assets of said M. Zier & Company, which are now in the possession of the New Albany Trust Company, as receiver of the Floyd Circuit Court, in a suit therein pending against said M. Zier & Company, because of their insolvency; and the petitioning creditors in this cause and said Connor, receiver as aforesaid, being now present and represented by George H. Hester and William Wilhartz, their solicitors, and said New Albany Trust Company, receiver as aforesaid, being now present and represented by Henry E. Jewett, its Vice-President, and by William W. Watts,

its solicitor, and after argument by counsel, *the said New Albany Trust Company, as receiver of the Floyd Circuit Court, by its said Vice-President, having voluntarily offered and agreed, by and with the consent and approval of said William W. Watts, its solicitor, in open court, to surrender full and immediate possession* and control of the property and assets of said M. Zier & Company, in its possession or under its control, as receiver of the Floyd Circuit Court, to said Connor, as receiver of this court, upon the presentation by him to said New Albany Trust Company of a certified copy of the order for his appointment as such receiver heretofore made by this court. It is now hereby ordered by the court that said Connor, receiver as aforesaid, forthwith present a certified copy of the order for his appointment as such receiver to the said New Albany Trust Company, and immediately thereupon take full possession and control of the property and assets of said M. Zier & Company that are now in the possession or under the control of said New Albany Trust Company as receiver of the Floyd Circuit Court.

On February 19 the New Albany Trust Company, through Henry E. Jewett, its vice-president, filed a report in the Floyd Circuit Court, in which it stated that in pursuance of the order of the court, it appeared before Judge Anderson of the District Court at Indianapolis, on Monday, February 16, and "upon the hearing in that court, *this receiver stated to the Honorable Judge of said United States District Court that it was ready and willing to pay over to the receiver appointed*

*by the Honorable Federal Court * * * the property and assets of M. Zier & Co. in the hands of this receiver;"* that it had not yet been able to make up its accounts as receiver, but was preparing the same to be submitted to the court, but that it was ready to turn over all of said property to the receiver of the District Court, and prayed an order from the court authorizing it to do so. The company further asked that upon the presentation and approval of its account as receiver, its resignation be accepted and it be fully and finally discharged as such receiver. (Petitioners' Exhibits, pp. 56–57.)

Upon the receipt of this report and tender of resignation by the New Albany Trust Company, Judge Utz, of the Floyd Circuit Court, ordered that a rule issue at once against said receiver to show cause why it should not be punished for contempt. (Petitioners' Exhibits, pp. 57–58.)

On the same day Connor demanded of the New Albany Trust Company the property of M. Zier & Co. in their possession, to which that company, on the same day, made the following reply (Petitioners' Exhibits, pp. 111–112):

> In view of your demand that as receiver of the Floyd Circuit Court we deliver you the property of M. Zier & Company, as such receiver will state.
>
> We this morning filed before Judge of the Floyd Circuit Court in chambers, report, a copy of which is attached hereto. Thereupon the Judge stated orally that he wanted us to hold

> the property until our accounts as receiver were rendered and passed upon. We think this might be done to-morrow, and if you are willing to defer action until then it will relieve us of embarrassment in the premises.
>
> On the other hand, if you insist on immediate surrender of the property to you, *we are bound to say that we believe that to carry out in good faith the understanding with the Honorable Judge of the United States District Court of Indianapolis and our vice-president, H. E. Jewett, we ought to surrender the property to you at once.*

Connor declined to grant further time, and thereupon (on the 19th) the New Albany Trust Company, by Jewett, its vice-president, immediately turned over to him the building and plant of M. Zier & Co., which contained all the property of that company, excepting certain books and cash. Connor immediately took possession of the property and put watchmen in charge to hold the same for him. (Petitioners' Exhibits, p. 79.)

On the next day, February 20, Joseph T. Ryerson & Son, by W. W. Watts, its attorney, the New Albany Trust Company, as receiver, and the United States Tube Company, by D. A. Sachs, its attorney, appeared before the Floyd Circuit Court, "*in vacation, at chambers,*" and the latter company, by its attorney, presented to the Judge a statement, signed and sworn to by D. A. Sachs, in which it was set forth that the New Albany Trust Company, as receiver, had wrongfully, unlawfully, and without leave of court turned over

and surrendered the possession of the boiler plant of M. Zier & Co. in New Albany to Connor, the receiver in bankruptcy appointed by the District Court, and was threatening to and would, unless restrained, by the court, turn over to Connor all the other assets of M. Zier & Co. in its hands. The petitioner therefore prayed that the New Albany Trust Company be cited to appear before the court in Chambers, at 3 o'clock p. m. of that day, to show cause why it should not be punished for contempt, and, if the court found that the company had violated its orders as represented, that it be removed from its office as such receiver and a successor immediately appointed, and that said receiver be required to account immediately and to turn over to its successor all of the property in its hands belonging to M. Zier & Co., and for such further orders as the court might deem right and proper in the premises. (Petitioners' Exhibits, pp. 58–60.)

Upon this petition the Judge of the Floyd Circuit Court on the same day entered an order removing the New Albany Trust Company from the receivership, and directing it immediately to account for all the assets of M. Zier & Co. which came into its hands as such receiver. The order further provided for the appointment of Charles D. Kelso to succeed the New Albany Trust Company as receiver of M. Zier & Co., and directed that he immediately give bond and qualify as such receiver, and that immediately upon his qualification he demand of the New Albany Trust Company and Frederick D. Connor the immediate

possession of the property of M. Zier & Co., which came into the hands of the New Albany Trust Company as receiver therein, and if the company or Connor should fail or refuse immediately to turn over and surrender the possession of said assets to said receiver that he immediately report the fact to the Judge for further instructions. (Petitioners' Exhibits, pp. 60–61.)

Kelso having immediately qualified, he was ordered by the Judge to proceed to execute the duties of his trust, and invested with all the powers and authority theretofore possessed by the New Albany Trust Company. (Petitioners' Exhibits, p. 61.)

On the same day Kelso reported to the Judge at at chambers that he had called upon the New Albany Trust Company and demanded of it the possession of the assets of M. Zier & Co., and that said Trust Company had failed and refused to surrender the possession thereof for the reason that it had turned over the plant to Connor, and that for the other assets of said company it intended to account forthwith to the Judge of the Floyd Circuit Court; that thereupon he, Kelso, had called upon Connor and demanded of him the possession of all of the property that had been wrongfully turned over to him by the New Albany Trust Company, which Connor failed and refused to do. (Petitioners' Exhibits, pp. 62–63.)

Thereupon, the Floyd Circuit Court entered an order that a summary writ be issued, directed to the sheriff of the county, requiring him immediately to

seize and deliver to Kelso all the property which said Connor had in his possession, and that the sheriff immediately execute said writ and forthwith make return to the Judge of the Court. (Petitioners' Exhibits, pp. 63–64.)

On February 21 Connor filed a petition in the United States District Court (Petitioners' Exhibits, pp. 78–82), in which, after setting forth the facts as to the delivery of the possession of the plant of M. Zier & Co. to him by the New Albany Trust Company, and his entering upon the same on the 19th of February, he stated that he retained possession of the same until the 20th, at about 7.30 p. m.; that on that day and at that time possession of said plant and all the property of M. Zier & Co. was demanded of him by Kelso, as receiver appointed by the Floyd Circuit Court in place of the New Albany Trust Company, which demand he refused; that thereupon he was served by the sheriff and deputy sheriff of Floyd County with a certified copy of an order of the Floyd Circuit Court made in the matter of the receivership of M. Zier & Co. pending before it (the order appointing Kelso receiver), and with a writ issued by that court on February 20, 1903, to the sheriff, requiring him forthwith to take from him possession of said plant and assets; and that thereupon said sheriff forcibly took possession of the property from him and his agents, and delivered the same over to said Kelso, who immediately took and was then in possession.

The petition of Connor further stated—

> That this petitioner believes the above-stated proceedings were procured to be had by William W. Watts, Esq., of Louisville, Ky., who during the continuation of the New Albany Trust Company, as receiver of M. Zier & Company, represented said Trust Company as such; that said Charles D. Kelso is now represented by one D. A. Sachs, Esq., of Louisville, Ky., an attorney at law, and that the petitioner believes that said Sachs also assisted in procuring the orders of the said Floyd Circuit Court above set out, and the petitioner further says that he verily believes the forcible removal of said property from his possession and control as receiver appointed by this court as aforesaid was brought about by the joint action and efforts of said Charles D. Kelso, as receiver, and Charles D. Kelso, individually, and William W. Watts, as attorney for said New Albany Trust Company, and D. A. Sachs, attorney for said Charles D. Kelso, receiver.

The premises considered, the petitioner prayed the court that Kelso, as receiver and individually, Raymond J. Morris, as sheriff and individually, Claude Citizen, as deputy sheriff and individually, Thomas Smithwick, as custodian of the plant of M. Zier & Co. and individually, William W. Watts, as attorney for the New Albany Trust Company, and D. A. Sachs, as attorney for Kelso, be enjoined and restrained from in any manner taking or keeping from the possession of petitioner the property and estate of M. Zier & Co.;

that they be required and directed immediately to redeliver to such property, and that they be cited to appear at a time to be fixed by the court and show cause why they should not be punished for contempt. (Petitioners' Exhibits, pp. 78–82.)

Upon this petition, the District Court, February 21, made an order requiring the parties therein named to appear before it at Indianapolis, on February 25, to show cause why they should not redeliver the property of M. Zier & Co. into the possession of Connor as receiver of that court, and in the meantime restraining them, their agents, attorneys, servants, and employees from in any way interfering with said property or making any disposition of the same. It was further ordered that the parties named appear before the court on the day indicated and show cause why they should not be punished for contempt. (Petitioners' Exhibits, pp. 90–92.)

On the same day the United States District Attorney for the District of Indiana filed an information in the District Court against Morris, Settison, Smithwick, Kelso, Watts, and Sachs for contempt of the District Court in dispossessing its receiver of the property in question.

Watts and Sachs filed separate answers to the rule to show cause and the information against them (Petitioners' Exhibits, Vol. I, pp. 93 and 116), which were traversed by the United States Attorney (Petitioners' Exhibits, Vol. I, pp. 129, 130).

On March 14, 1903, the District Court found the petitioners guilty of contempt as charged in the information and rule, and sentenced them to imprisonment in the jail of Warren County for sixty days and to pay costs. (Opinion, Anderson, J., Petitioners' Exhibits, p. 132 *et seq.*)

ARGUMENT.

I.

The argument for petitioners, as already stated, is based upon the assumption that the District Court took summary possession of the *res* in controversy. This assumption, as the facts above detailed plainly show, is purely gratuitous. The only thing in the nature of a summary proceeding by the District Court was the order of February 11, 1903 (Petitioners' Exhibits, p. 74), appointing Connor receiver and authorizing him to take possession of the property of M. Zier & Co., and directing the New Albany Trust Company to deliver up the same to him, and to refrain from interfering with his possession and control. That order was, as has been shown, made upon the representations of the petitioning creditors in the bankruptcy suit in the District Court that the proceedings in the State court were fraudulent and collusive and in derogation of the rights and interests of themselves and other creditors, and that an emergency existed for the appointment of a receiver forthwith. The authority for such appointment is given by section 2, of the act of July 1, 1898 (30 Stats., 545), which provides that courts of bankruptcy shall have power to—

> (3) appoint receivers or the marshals, upon application of parties in interest, in case the courts shall find it absolutely necessary, for the preservation of estates, to take charge of the property of bankrupts after the filing of the

petition and until it is dismissed or the trustee is qualified.

But, it will be observed, no attempt was ever made to enforce the order in question. On the contrary, as set forth in the petition of the New Albany Trust Company of February 14, 1903 (Petitioners' Exhibits, p. 46), the District Court stated that the order should be suspended until that company had had an opportunity to be heard. At the trial of the contempt cases, Connor testified that at the time he received the order appointing him receiver, he also received a note from the clerk of the District Court directing him to defer any action until a hearing was had on the following Monday—the 16th. (Transcript of Evidence, p. 4.) In fact, there is nothing in the record which indicates that the District Court ever intended summarily or arbitrarily to enforce that order, assuming that what it may have *intended* to do is at all material. Its action in authorizing Connor to appear in the State court and request that court to direct its receiver to turn over the property to him, evidences an entirely opposite intention—an evident intention to observe the rule of comity to the full.

On the other hand, the action of the State court in refusing to pass upon the application of Connor at the time, although requested to act immediately, and postponing any consideration of the same until the next term of the court, three weeks later, could hardly be called the observance of comity. In view of the statute, that court must have known that the District court appointed Connor receiver because, in

its opinion, the circumstances required that it immediately take possession of the property. The fact that that was the last day of the term, and the State court was about to take a vacation, is hardly an excuse for this delay. The matter might have been passed upon that very day. If not, that court was authorized (Rev. Stat. Indiana, 1897, sec. 1251) to issue such an order to its receiver in vacation. It is a pertinent fact, as showing what the State court *might* have done, if it had been so disposed, that its order appointing the New Albany Trust Company receiver was made in vacation, on the very day the petition for such receiver was filed. So, too, the orders of that court subsequent to its adjournment on February 14—the order removing the New Albany Trust Company and appointing Kelso receiver in its stead, and the order directing the sheriff to seize the property from Connor—were all made in vacation.

But it was not necessary for the District Court to wait until the Floyd Circuit Court had passed upon the application of its receiver, because, two days later, February 16, the New Albany Trust Company, by order of the State court, appeared in the District Court and then and there voluntarily offered to turn over the property. The receiver of the State court was represented on that occasion by H. E. Jewett, its vice-president, and W. W. Watts, its attorney—the latter, the District Court says, claiming that he was authorized by the judge of the State court to represent the matter to the District Court; and, after a protracted discussion, both Jewett and Watts conceded that the right to pos-

sess the property in question was in the District Court, and voluntarily offered to turn it over to the receiver of that court. (Opinion Petitioners' Exhibits, pp. 137, 138.) The assertion that this offer was not voluntarily made, but was procured by threat or duress, hardly comports with the statement of the New Albany Trust Company, in making its report to the State court of the proceedings before the District Court, "that upon the hearing in that court this receiver stated to the Honorable Judge of said United States District Court that it was ready and willing to turn over to the receiver appointed by the Honorable Federal Court * * * the property and assets of M. Zier & Co. in the hands of this receiver." (Petitioners' Exhibits, p. 56.) Nor does it comport with the reply of the New Albany Trust Company to Connor, when called upon to deliver possession, after asking time to make up their accounts to the State court, that, "On the other hand, if you insist on the immediate surrender of the property to you, we are bound to say that we believe that, to carry out in good faith the understanding with the Honorable Judge of the United States District Court of Indianapolis and our Vice-President, H. E. Jewett, we ought to surrender the property to you at once" (Petitioners' Exhibits, pp. 111–112); nor with the subsequent actual and voluntary surrender of the property by the New Albany Trust Company to Connor as receiver.

The testimony adduced at the trial of the contempt cases is conclusive upon the point that the surrender of the property of M. Zier & Co. to Connor by the

New Albany Trust Company was the voluntary act of that company. The offer or agreement to surrender was made by Jewett and Watts, as they themselves testify (Transcript of Evidence, pp. 35, 38, 39, 189, 211), because they had come to the conclusion, at the hearing before the District Court on the 16th and 17th of February, that that court had jurisdiction of the property. The fact that they, or either of them, may have received the impression that the District Court was determined to enforce its jurisdiction, if necessary, even by the use of a club (Transcript of Evidence, p. 168)—a perfectly proper thing, it would seem, *if necessary*, whenever jurisdiction exists—does not affect the character of their offer, and it is evident that they themselves did not view it in that light. The subsequent statement of Jewett to Connor, above referred to, that if he insisted he must surrender the property at once, in order to carry out *in good faith* his understanding with the District Court, absolutely repudiates any such suggestion. So the whole defense of Watts to the contempt proceedings against him was that he had endeavored to carry out *in good faith* the promise he had made to the District Court to surrender or to advise the surrender of the property, although his opinion as to the law in the case had changed. Surely if, after his return to New Albany, he was no longer of opinion that the District Court had jurisdiction, he would not have felt obliged to do all he could to carry out an agreement extorted from him by threat or compulsion and under a mistaken view of the law.

It should be borne in mind that the District Court, from the commencement of the bankruptcy proceedings in that court, was impressed with the idea that the proceedings in the State court were not only in derogation of its exclusive jurisdiction in bankruptcy matters, but a fraud upon the creditors of M. Zier & Co. Allegations to that effect were made in the petitions filed by the Inland Steel Company and others, and the District Court found, as a matter of fact, that M. Zier, the Vice-President of M. Zier & Co., and who was afterwards, as stated in the petition of the Inland Steel Company, put in charge of the plant when the New Albany Trust Company took possession as receiver, had stolen $9,600 from the funds of his corporation; that, on or about the 29th of December (the proceedings in the State court being begun on the 30th), this money was paid over to Charles L. Jewett, who, with his brother, H. E. Jewett (the latter being vice-president of the New Albany Trust Company), constituted the firm of Jewett & Jewett, attorneys, of New Albany, to be paid by Charles L. Jewett to the agent of Minnie Zier, a large stockholder of M. Zier & Co., and a sister-in-law of M. Zier, with the exception of $600, which was to be retained by him as his fee. (Opinion Anderson, J., Petitioners' Exhibits, pp. 132–133.) See also Transcript of Evidence, Connor's testimony, pp. 9, 10; Charles L. Jewett's testimony, pp. 60, 61.

The District Court also states that "since the commencement of the trial of these defendants, owing to

the startling disclosures made in the evidence here, the fraudulent preference of $9,600 has been returned and paid in money to the receiver of this court." (Opinion, Petitioners' Exhibits, p. 155.)

The District Court further found that the day before the institution of the suit in the State court by Ryerson & Son, of Chicago, that firm received $3,100 from M. Zier & Co., and that Charles M. Jewett, as the attorney and confidential adviser of M. Zier and his corporation, went to Chicago, as he himself testified, chiefly for the purpose of procuring Ryerson & Son to bring suit in the Floyd Circuit Court, at New Albany, to have a receiver appointed to wind up its affairs. (Opinion, Petitioners' Exhibits, pp. 133–134.)

At the trial of the contempt cases in the District Court, Judge Utz, of the Floyd Circuit Court, testified that if he had known of these fraudulent preferences he would not have insisted upon the jurisdiction of his court. (Transcript of Evidence, p. 112.)

It is also to be observed that, after his citation for contempt, Kelso, the receiver of the State Court, delivered the plant and property of M. Zier & Co. to the receiver of the District Court without any order of the State court in the premises, and the receiver of the District Court is now in possession of the same. (Opinion, Petitioners' Exhibits, p. 154.)

II.

The New Albany Trust Company was appointed by the Floyd Circuit Court receiver of the property of M. Zier & Co., under authority of section 1245 of the

Revised Statutes of Indiana of 1897, which provides that a receiver may be so appointed in the following case among others:

> *Fifth.* When a corporation has been dissolved, or is *insolvent*, or is in imminent danger of insolvency, or has forfeited its corporate rights.

The petition of Ryerson & Son stated that M. Zier & Co. was *insolvent*, and prayed the appointment of a receiver to take charge of its property, and "that the court shall make such orders as shall be necessary and proper for the preservation of said property *for the continuance of said business for the purpose of completing unfinished contracts*, and such other and further orders as the court shall deem necessary and proper."

So, too, the order entered by the Floyd Circuit Court, after the creditors' meeting of January 24, 1902, held for the purpose of considering whether the plant should be indefinitely continued or not (see Notice to Creditors, Petitioners' Exhibits, p. 36), directed that, in accordance with the unanimous wish of those present at that meeting, the receiver should go on and *complete all unfinished contracts*, and that he might purchase the necessary material for this purpose, *but that he should make no new contracts.* (Petitioners' Exhibits, p. 40.)

It is manifest, therefore, as the District Court held, that the proceeding in the State Court was, in substance and effect, a bankruptcy proceeding and contemplated the winding up of the business of M. Zier & Co.

III.

The jurisdiction of the District Court was not, however, dependent upon the facts just stated, as M. Zier & Co. had committed certain acts of bankruptcy. As heretofore shown, it was alleged in the petitions of the Inland Steel Company and others in the District Court, and found as a fact by that court, that only a day or two prior to the institution of the suit in the State court by Ryerson & Son that firm had received a fraudulent preference of over $3,000, and that $9,000 had been paid to Minnie Zier, a stockholder of the insolvent company, or her agent.

The provision of the Bankruptcy Law on this subject is as follows (Act of July 1, 1898, 30 Stat., 546):

> SEC. 3a. Acts of bankruptcy by a person shall consist of his having * * * (2) transferred, while insolvent, any portion of his property to one or more of his creditors, with intent to prefer such creditor over his other creditors.

Whether the preferred creditor is aware at the time of payment that his debtor is insolvent, is immaterial so far as it respects the character of the transaction. If he does not know, the payment is none the less a preference. (*Pirie* v. *Chicago Title and Trust Company*, 182 U. S., 438.) But the fact that Ryerson & Son, a few days after they received the sum above named, brought suit in the State court against M. Zier & Co., and had a receiver appointed for that company because of its insolvency, is important, as it would seem to constitute an absolute bar to any defense by either

of them that the transfer of this particular portion of the debtor's property was not an act of bankruptcy, because not made while he was insolvent.

Besides, Chas. L. Jewett, attorney for M. Zier & Co., testified that when he went to Chicago to see Ryerson & Son about the institution of proceedings in the State court, he told Mr. Jackson, the agent of that firm, in reply to his inquiry whether there could not be bankruptcy proceedings if M. Zier & Co. had committed acts of bankruptcy, that the company had committed "lots of them; preferences, lot of them, and the company is insolvent." (Transcript of evidence, pp. 48, 49, 50.)

IV.

The amendment to the Bankruptcy Law contained in the act of February 5, 1903, makes the specific act here referred to—the appointment of a receiver by a State Court because of insolvency—an act of bankruptcy. That amendment alters section 3a of the original act defining acts of bankruptcy, so as to make it read:

> or (4) made a general assignment for the benefit of his creditors, or, being insolvent, applied for a receiver or trustee of his property, *or because of insolvency a receiver or trustee has been put in charge of his property* under the laws of a State, or a Territory, or of the United States.

The petition of the Inland Steel Company was filed February 6, 1903, the day after this amendment took effect.

It is contended, however, that this amendment does not apply to cases in which a receiver has been appointed prior to its passage. Yet such is the plain language of the statute. The act took effect on February 5, and it made an act of bankruptcy on the part of a "person" the fact that, "because of insolvency, a receiver *has been* put in charge of his property under the laws of a State." If a suit had been instituted on that day, and the petition had alleged that a receiver of the bankrupt's estate "has been" appointed under the laws of the State, and it was shown that he had been appointed the day before, or at any time within four months of the filing of such petition, an act of bankruptcy would have been charged within the letter as well as the spirit of the statute.

The last section of the act of February 5, 1903, provides—

> That the provisions of this amendatory act shall not apply to bankruptcy cases pending when this act takes effect, but such cases shall be adjudicated and disposed of conformably to the provisions of the said act of July 1, 1898.

This is the only saving clause in the act, and would seem clearly to indicate that in all other respects the act was to go into full force and effect on the date of its passage.

In the original act, Congress expressly provided against its having the retroactive effect, which it otherwise would have had (under section 3 c.), by postponing the filing of petitions in voluntary and involuntary

bankruptcy under it until one and four months, respectively, after its passage, although declaring that the act itself should take effect on that day.

Aside from the language of the statute, it is not difficult to understand why Congress intended the act of February 5, 1903, to be retroactive. The particular provision in question was doubtless designed to prevent the very thing we have here—bankruptcy proceedings in the courts of a State or Territory in the guise of a suit for the appointment of a receiver. That situation being in the judgment of Congress a reprehensible thing, the motive and intention would be to prevent it, to enlarge the Federal scope, and therefore to make the provision retroactive and not merely prospective. With the original act it was different, as the legislation then enacted made a radical change in the existing order of things, and if it had been retroactive the result would manifestly have been most unjust and oppressive. But when this amendatory act was passed the new order was established. The particular amendment in question having for its object merely the preservation of the Federal jurisdiction, to make it retroactive was to do no injustice.

In support of the view that the act of February 5, 1903, was intended to be retroactive in certain respects, take section 13 of that act, which amends subdivision a of section 60 of the act of July 1, 1898, so as to make it read (the amendments being in italics):

> a. A person shall be deemed to have given a preference if, being insolvent, he has, *within*

four months before the filing of the petition, or after the filing of the petition, and before the adjudication, procured or suffered a judgment to be entered against himself in favor of any person, or made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class. *Where the preference consists in a transfer, such period of four months shall not expire until four months after the date of the recording or registering of the transfer, if by law such recording or registering is required.*

Will it be said that the latter clause would not apply to transfers recorded or registered within four months of the passage of that act?

But, whatever the meaning of this amendment, the jurisdiction of the District Court in this case rests firmly upon the undisputed facts as to the fraudulent preferences made by Mr. Zier & Co. to Minnie Zier and Ryerson & Son.

V.

In support of the jurisdiction of the District Courts of the United States in cases of this kind, it is hardly necessary to do more than refer the court to the authorities, State and Federal, cited by Judge Anderson in his opinion. (Petitioners' Exhibits, Vol. I, p. 139 et seq.)

In re Merchants' Ins. Co., 6 N. B. R., 43.

In re Lady Bryan Mining Co., 6 N. B. R., 262.

Watson v. *Citizens' Saving Bank*, 11 N. B. R., 161.

In re Gutwillig, 90 Fed., 475.

In re Bruss-Ritter Co., 90 Fed., 651.

In re Rouse & Co., 91 Fed., 96.

Lea v. *George M. West Co.*, 91 Fed., 237.

In re Smith, 92 Fed., 135.

In re Etheridge Furniture Co., 92 Fed., 329.

In re Richard, 94 Fed., 633.

In re Lengert Wagon Co., 110 Fed., 927.

In re Storck Lumber Co., 114 Fed., 360.

Parmenter Mfg. Co., v. *Hamilton* (Mass.), 51 N. E., 529.

Harbaugh v. *Costello* (Ill.), 56 N. E., 363.

Special attention may, however, be called to a few of these cases as showing the trend of decision upon this subject.

In re Merchants' Insurance Co. (6 N. B. R., 43) was a suit in the United States District Court of Illinois, under the Act of 1867, by a creditor of that company, to have it adjudged a bankrupt. Prior to the filing of the petition therein proceedings had been begun in a State court for the appointment of a receiver and a dissolution of the company on the ground of its insolvency, and the question was whether these facts, which were admitted, constituted an act of bankruptcy. The District Court so held, observing (p. 45):

> The object and intent of the general bankrupt law is to place the administration of affairs of *insolvent* persons and corporations *exclusively* under the jurisdiction of the Federal courts of bankruptcy; and the enactment of the general

bankruptcy law now in force suspended all actions and proceedings under State *insolvent* laws.

The court further said (pp. 45–46):

> But it is objected that the proceedings in the State court here complained of being in accordance with a general statute of this State and part of the organic law by which the respondent exists, and being predicated mainly upon the reserved right of the State to protect its citizens against irresponsible insurance companies, and the State court having acquired jurisdiction of the parties and subject-matter, this court can not now interfere as a bankrupt court and take charge of and administer the assets in question, although the insolvency of the respondent is fully conceded.
>
> It seems enough to suggest in answer to this position that, if correct, any State could effectually defeat the operation of any bankrupt law passed by Congress by simply providing that any person or corporation, if deemed insolvent or incapable of doing business by a State officer, might, under the power of exercising and enforcing police regulations or enactments by States, be wound up and its assets administered upon in the State courts, notwithstanding such person or corporation might be insolvent and guilty of all the acts of bankruptcy provided for in the general bankrupt law.

The similarity of the facts of the recent case of *In re Bruss-Ritter Co.* (90 Fed. Rep., 651) to the one at

bar is very striking. The District Court for the Eastern District of Wisconsin there said (p. 651–652):

> The petition by five creditors states a *prima facie* cause within the provisions of the recent act of Congress for an adjudication of involuntary bankruptcy against the Bruss-Ritter Company as an insolvent corporation of Wisconsin. The petition was filed November 4, 1898, and on November 11, 1898, upon petition showing cause therefor, a receiver of the effects of said corporation was appointed by order of this court. The motion to dismiss is founded solely upon the contention that the bankruptcy act of July 1, 1898, having postponed the filing of any petition for involuntary bankruptcy until November 1, 1898, was inoperative in the case at bar, because an action was commenced in the Superior Court of Milwaukee County on October 27, 1898, founded upon alleged insolvency and fraud, to take possession of the assets of the corporation for the same purposes involved in the bankruptcy proceedings, pursuant to provisions of the Wisconsin statute, which action was pending when this petition was filed, including an application for the appointment of a receiver. The power of Congress to enact a general bankruptcy statute is secured by constitutional provision. In the absence of such Congressional enactment the States are free to provide for insolvency relief of limited extent, but when Congress exercises its authority by a general enactment, all State action is suspended from such time and subject only to such limitations as may be prescribed in the act. (*Tua* v.

Carriere, 117 U. S., 201, 209.) As remarked in *Platt* v. *Archer* (9 Blatchf., 559), this authority of Congress "is paramount and exclusive, and so is the jurisdiction of the District Court thereunder."

In conclusion, the court said (p. 654):

> There is no jurisdiction to administer in the State courts causes which are clearly so defined in this act, and no ground for applying the doctrine which prevails where jurisdiction is concurrent giving priority to that which is first obtained.

In re Storck Lumber Co. (114 Fed. Rep., 360) is also instructive. In that case a court of the State of Maryland had appointed a receiver of the company, upon the petition of its sole stockholder, alleging its insolvency and praying its dissolution. Subsequently certain creditors of the company commenced proceedings in an involuntary bankruptcy in the District Court for Maryland. The receivers appointed by the State court intervened and moved to quash the petition on the ground that the jurisdiction of the State court was complete when it entered its decree dissolving the corporation, and that when the said petition was filed the defendant corporation was no longer in existence, and all its property was vested in said receiver. But the District Court said (p. 361):

> The Maryland statute for winding up insolvent corporations is in the nature of a proceeding in insolvency. * * * The National Bankrupt Act of 1898 superseded the State in-

> solvent laws, and now, when commercial and manufacturing corporations are so numerous, and are sometimes used, as in this case, more as a cover from individual liability than for more legitimate uses, it can scarcely be supposed, as the Bankrupt Act especially provides for proceedings against commercial corporations, that it was intended that such a corporation could commit acts of bankruptcy and escape the provisions of the Bankrupt Act by applying to be wound up under the State statute and thus defeat the operation of the bankrupt law.

VI.

Although the property referred to in this case was not summarily taken from the receiver of the State court, but voluntarily surrendered, the authority of the District Court to take summary action *in a proper case* can hardly be questioned.

In re Lengert Wagon Co. (110 Fed., 927), the District Court for the Southern District of New York said (pp. 927–8):

> Certain judgments were entered against the Lengert Wagon Company in the Supreme Court of the State of New York, and thereunder, on the 20th of September, 1901, property of the corporation was levied upon by the sheriff of New York County under executions issued upon the judgments. Thereafter proceedings were instituted in the State court by the directors of the corporation for a voluntary dissolution thereof on the ground of the insolvency of the corporation, and a temporary re-

ceiver of the property and effects of the corporation was appointed by an order of the court dated the 23d of September, 1901. * * *

On the 25th of September, 1901, involuntary proceedings against the corporation were commenced in this court. On the 27th of September, 1901, a receiver of the property of the bankrupt was appointed under section 2 (3) of the Bankruptcy Act, and an attempt made by him to obtain possession of the property. This was resisted by the receiver and sheriff in the State court, and the receiver in this court now applies for an order specifically directing those officers to turn the property over to him. The contention on their part is that, as the State court obtained jurisdiction of the matter and possession of the property before the proceedings were instituted in this court, the possession can not be disturbed by process issued from this court; citing *In re Chambers*, 98 Fed., 865; *Trust Co.* v. *Benbow*,, 96 Fed., 514. But the proceeding in the State court is one incident to the insolvency off the corporation, and it seems to be well settled that the Bankruptcy Act gives exclusive jurisdiction to the United States courts in such matters, where proceedings are properly instituted, and ousts the State courts of all jurisdiction with respect to the possession or distribution of insolvent estates. * * * The receiver of this court is therefore entitled to the custody of the property, but in view of the comity which exists between the Federal and State courts, and the fact that the receiver is an officer of the State court, and acting under its

> immediate direction, application should be made to it for a proper order in the case. (*In re Lesser*, 100 Fed., 433, 439.) *In the meantime the receiver in the State court will be restrained from disposing of the property in any way.*

The right of the receiver appointed by the District Court to take possession of the property is thus clearly asserted. And it will hardly be maintained that where, in accordance with the views thus announced, the receiver of the District Court *has* applied to the State court for an order directing its receiver to turn over the property and the latter court ignores or unduly delays acting upon such request, the rule of comity is so far reaching and one sided as to prevent the District Court, in the exercise of its jurisdiction and for the protection of creditors, from summarily seizing the property. But this is not the case here, for the District Court did not act summarily, but the property was voluntarily turned over to its receiver.

It is not contended that the rule of comity does not apply to bankruptcy cases, but it is contended that that rule has its limitations and ceases to apply where the State court becomes derelict in its duty.

The doctrine announced in *Peck* v. *Jenness* (7 How., 611) and subsequent cases is not a rule of comity but a rule of law, which applies only to cases where the State court had full and complete jurisdiction over the subject-matter prior to the suit in the Federal Court, or where, after the proceedings in the Federal Court are commenced, the jurisdiction of the State Court remains concurrent.

Thus, in *Peck* v. *Jenness*, the court, after stating that the District Court has exclusive jurisdiction "of all suits and proceedings in bankruptcy," observes (7 How., 623, 624):

> *But the suit pending before the Court of Common Pleas was not a suit or proceeding in bankruptcy;* and although the plea of bankruptcy was interposed by the defendants, the court was competent to entertain and judge of this plea as of any other. *It had full and complete jurisdiction* over the parties and the subject-matter of the suit; *and its jurisdiction had attached more than a month before any act of bankruptcy was committed.*

The court then goes on to say that—

> It is a doctrine of law too long established to require a citation of authorities, that *where a court has jurisdiction* it has a right to decide every question in the cause, and whether its decision be correct or otherwise, its judgment, till reversed, is regarded as binding in every other court; and that where the jurisdiction of a court, and the right of a plaintiff to prosecute his suit in it, have once attached, that right can not be arrested or taken away by proceedings in another court.

The case of *Johnson* v. *Bishop* (1 Woodworth, 324) was like that of *Peck* v. *Jenness*, in that the suit in the State court was to enforce a valid pre-existing lien on the property of the bankrupt, and the jurisdiction of the State court to entertain such a suit was unquestioned. It was therefore held that, although the assignee in bankruptcy was entitled to the possession of

the property of the bankrupt, he could not maintain an action in the Federal Court to take the property from the State sheriff, who had taken it upon attachment duly issued to him out of the State court, in order to enforce a valid preexisting lien, before the proceedings in bankruptcy were commenced, and whose possession was said to be that of the court. The court also observed that the Federal courts did not have exclusive jurisdiction of actions in behalf of assignees in bankruptcy, but that the jurisdiction of the State courts in such cases was concurrent—that is, concurrent *in aid of* the Federal officers and proceedings in bankruptcy.

The distinction between cases where the State court has jurisdiction and cases where it has not was pointed out by Mr. Justice Brewer, in *Clarke* v. *Larremore*, decided February 23, 1903. In that case it was contended that "the sheriff having sold the goods levied on before the filing of the petition in bankruptcy, the proceeds of the sale were the property of the plaintiff in execution, and not of the bankrupt, at the time of the adjudication, and the trustee therefore has no title to the same." But the court said:

> This contention can not be sustained. The judgment in favor of petitioner against Kenney was not like that in *Metcalf* v. *Barker* (187 U. S. 165), one giving effect to a lien theretofore existing, but one which, with the levy of an execution issued thereon, created the lien; and as judgment, execution, and levy were all within four months prior to the filing of the

> petition in bankruptcy, the lien created thereby became null and void on the adjudication of bankruptcy. *This nullity and invalidity relate back to the time of the entry of the judgment* and affect *that* and *all subsequent proceedings.*

In *Clarke* v. *Larremore* the District Court, upon the filing of a petition in involuntary bankruptcy against the defendant in the suit in the State court, and after the recovery of judgment by the plaintiff in the State court, and the levy and execution thereof by the sheriff, had issued an order restraining the sheriff from paying the money to the plaintiff in execution. The possession of the sheriff of the State court was, under the rule announced in *Peck* v. *Jenness*, the possession of the court, but as the court had no jurisdiction in the premises, the sheriff was equally without authority and could be restrained. *The right of the bankruptcy court to enjoin the officers of a State court and summarily take possession of property in their hands, when necessary to the enforcement of their exclusive jurisdiction in bankruptcy, is thus distinctly recognized.*

In the case of *Wells* (114 Fed., 222) it was held that the District Court could not enjoin an action of replevin, begun in the State court on the day after the bankruptcy proceedings were instituted, to recover property in the possession of the bankrupt, the ownership of which was claimed by the plaintiff in the replevin suit, and of which the District Court never had possession. Manifestly this is a very different case from the one here. It is not disputed that the property in the hands of the receiver of the State court was the property of

M. Zier & Co. Certainly the *Wells* case is no authority for the proposition that the District Court could not enjoin an action in a State court to get possession of what was unquestionably the property of the bankrupt.

The case of *Shields* v. *Coleman* (157 U. S., 168), upon which great reliance seems to be placed by counsel for petitioners, is equally inapplicable. In that case it was held that—

> A *Circuit Court* of the United States has not the power to appoint a receiver of property already in the possession of a receiver duly and previously appointed by a State court, and can not rightfully take the property out of the hands of the receiver so appointed by the State court.

In that case—which was not a bankruptcy case—the jurisdiction of the two courts, Federal and State, was concurrent. Both equally had the right to appoint a receiver of the railroad property in question, and the Federal court having relinquished the jurisdiction it had first acquired, by taking a bond in lieu of the property and discharging its receiver, it could not afterwards wrest the property from the receiver thereof subsequently appointed by the State court.

So, in *Louisville Trust Co.* v. *Comingor* (184 U. S., 18), it was merely held that an assignee appointed by a State court, and claiming certain sums paid to him for services, could not be summarily proceeded[1] against in the District Court, which had acquired jurisdiction

in bankruptcy of the property of the assignors, his claim to the money being adverse.

In *Bardes* v. *Hawarden Bank* (178 U. S., 524) the court pointed out that the Bankruptcy Act of 1898 (sec. 23a) clearly recognizes "the essential difference between proceedings in bankruptcy, on the one hand, and suits at law or in equity, on the other"—suits "between trustees as such and adverse claimants, concerning the property acquired or claimed by the trustees." It was accordingly held that clause b of section 23, which restricts such suits by trustees to the courts, State and Federal, "where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant," prevented the trustee in that case from bringing a suit in equity in the District Court, against third persons, to set aside an alleged fraudulent transfer of property made within four months of the filing of the petition in bankruptcy, without the consent of the parties so proceeded against.

In that case the court also observed:

> The powers conferred on the courts of bankruptcy by clause 3 of section 2, and by section 69, after the filing of a petition in bankruptcy, and in case it is necessary for the preservation of the property of the bankrupt to authorize receivers or the marshals to take charge of it until a trustee is appointed, can hardly be considered as authorizing the forcible seizure of such property in the possession of an adverse claimant.

In *Bryan* v. *Bernheimer* (181 U. S., 189, 197) this latter observation was said to have been an inadvertence, and upon a question not arising in the case then before the court; and it was held that where the person afterwards adjudged a bankrupt had, within four months previous to the filing of the petition in bankruptcy, made a general assignment for the benefit of his creditors, and a third party had purchased the property from the assignees *after* the filing of the petition in bankruptcy, the bankruptcy court could direct a marshal appointed under the authority of clause 3 of section 2 of the Bankruptcy Act summarily to seize the same. As the purchaser from the assignee based his claim merely upon the fact that he had made the purchase in good faith, it was held that he had no title superior to that of the bankrupt's estate, and did not hold adversely.

In *Mueller* v. *Nugent* (184 U. S., 1) the referee found that Nugent, the bankrupt, had, shortly *before* the filing of the petition in bankruptcy, transferred a portion of property to his son as his agent. Upon a rule made by the referee against the latter to show cause why he should not be required to surrender the property, which was afterwards made absolute, the jurisdiction of the court was denied, on the ground that he received the property before the petition was filed. When this contention was overruled by the District Court and his commitment ordered until he pay over the amount in question, he sought to amend his pleadings so as to show that he held adversely to the bank-

rupt, and not as his agent. The District Court refused to permit this amendment, and taking the facts as found by the referee, this court said (p. 14):

> The proposition was that, as matter of law, where property of a bankrupt has come into the hands of a third party *before* the filing of the petition in bankruptcy, as the agent of the bankrupt, and to which he asserts no adverse claim, the bankruptcy court has no power by summary proceedings to compel the surrender of the property to the trustee in bankruptcy duly appointed.
>
> In other words, the question reduces itself to this: Has the bankruptcy court the power to compel the bankrupt, or his agent, to deliver up money or other assets of the bankrupt, in his possession or that of some one for him, on petition and rule to show cause? Does a mere refusal by the bankrupt or his agent so to deliver up oblige the trustee to resort to a plenary suit in the Circuit Court or to a State court, as the case may be?
>
> If it be so, the grant of jurisdiction to cause the estates of bankrupts to be collected and to determine controversies relating thereto would be seriously impaired, and, in many respects, rendered practically inefficient.
>
> The bankruptcy court would be helpless indeed if the bare refusal to turn over could conclusively operate to drive the trustee to an action to recover as for an indebtedness, or a conversion, or to proceedings in chancery, at the risk of the accompaniments of delay, complication, and expense, intended to be avoided by the simpler methods of the bankrupt law.

The court further said (pp. 14–15):

> It is as true of the present law as it was of that of 1867, that the filing of the petition is a *caveat* to all the world, and in effect an attachment and injunction (*Bank* v. *Sherman*, 101 U. S., 403); and on adjudication, title to the bankrupt's property became vested in the trustee (§§ 70, 21 *e*), with actual or constructive possession, and placed in the custody of the bankruptcy court.
>
> There was no pretence that at the date of the filing of this petition in bankruptcy this money of the bankrupt, $4,133.45 of which had been collected a few days, and $10,100 a few hours, before, was held subject to any adverse claim, or that the right or title thereto had been passed over to another.
>
> The position now taken amounts to no more than to assert that a mere refusal to surrender constitutes an adverse holding in fact, and therefore an adverse claim when the petition was filed, and to that we can not give our assent.

Where, therefore, the property of the bankrupt is in the hands of a receiver previously appointed by a State court, since his possession can not be said to be adverse, but is for and in virtue of the title of the bankrupt, although the rule of comity may require application to be first made to the State court for the surrender of possession, still, if that request were refused or ignored, the emergency which justified the immediate appointment of the receiver in bankruptcy would also seem

warrant the summary seizure of the property by the nkruptcy court.

All this, however, is beside the mark, since the Dis-ct Court did not in this case take summary posses-n of the property.

VII.

As has been shown, the District Court acquired pos-ssion of the property of M. Zier & Co. not by sum-ry proceedings, but orderly and peacefully, through e voluntary surrender of the same by the New Albany ust Company. Whether that company was author-d thus to relinquish possession was a matter solely tween it and the State court. It should be remem-red, however, in complete justification of the District ourt, that the petitioner Watts, who, with H. E. Jewett, peared for the New Albany Trust Company in the strict Court on the 16th and 17th of February, when e offer to surrender was made and accepted, stated at he had full authority to represent the State court the matter.

After the voluntary surrender of the property to onnor, the jurisdiction and possession of the District ourt was complete. The subsequent action of the ate court, therefore, in seizing the property out of s hands was absolutely indefensible. Whatever juris-ction it may have had of the *res* in controversy prior the institution of the bankruptcy proceedings in the istrict Court, it unquestionably had none after their stitution. The surrender of the property by Kelso

after he was cited for contempt, without an order from the State court for that purpose, sufficiently demonstrates this fact. Not having the right of possession, therefore, at the time it appointed Kelso and directed him to act, that court had no authority, either peaceably or summarily, to take possession.

If any authorities were needed in support of this proposition, it would be sufficient to refer to those cited by petitioners in respect to the alleged summary action of the District Court. Certainly, if a court having the right of possession can not summarily take possession, a court which lacks that right is equally prohibited. If it can not hold the property, by what authority, and to what end, shall it be allowed to seize it?

VIII.

I do not feel called upon to defend the action of the District Court in punishing petitioners for contempt. The power of a bankruptcy court to enforce its jurisdiction by such proceedings is unquestioned. Whether the facts presented warranted their conviction and the punishment imposed, were matters within the judgment of the District Court to determine, as they are within the power and discretion of this court to review. It may be noted, however, that counsel for petitioners do not, in their briefs, attempt any defense on this ground, but rely solely upon the question of jurisdiction.

HENRY M. HOYT,
Solicitor-General.

APRIL 20, 1903.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

WILLIAM W. WATTS AND DAVID A. Sachs, petitioners,
v.
THE UNITED STATES, HENRY C. PETTIT, United States marshal for the district of Indiana, and Robert Metzger, sheriff of Marion County, Ind.

Nos. 15 and 16, Original.

ON HABEAS CORPUS AND CERTIORARI TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

SUPPLEMENTAL BRIEF FOR THE UNITED STATES.

The argument of counsel for petitioners, both in their briefs and at the bar, relates exclusively to the question of jurisdiction, or rather to the manner in which the District Court exercised its jurisdiction over the property in dispute. They fail to make the obvious point, suggested from the bench, that even if the District Court had jurisdiction, the acts charged against their clients having been performed, if at all, only in their capacity as attorneys, did not legally constitute contempt.

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In the only issues thus presented, involving as they do the maintenance and proper enforcement of the Federal jurisdiction in bankruptcy, the Government is deeply interested. With the questions arising out of the contempt cases proper, not adverted to by the other side, it has no concern. As heretofore stated, those were matters for the District Court to determine, and for this court, if it sees fit, to review. It may be noted, however, that acts similar to those committed by petitioners have been held to constitute contempt in the following cases: *In re Vogel*, 2 N. B. R., 427; Fed. Cas. 16, 983. *In re Ulrich*, 8 N. B. R., 15; Fed. Cas. 14, 328. *In re Litchfield*, 13 Fed. Rep., 1866; *Ex parte Davis*, 112 Fed. Rep., 139; *Royal Trust Co.* v. *Washburn, etc., Ry. Co.*, 113 Fed. Rep., 531. See particularly *Anderson* v. *Comptois*, 48 C. C. A., 1, and *note*, p. 7; also reported in 109 Fed. Rep., 971.

I.

Only a pretense of argument is made by counsel for petitioners against the jurisdiction of the District Court over the property of M. Zier & Co. The fact that within four months prior to the filing of the petition therein, that company had committed acts of bankruptcy by making preferences denounced by the statute is not and can not be denied. Besides, the amendment of February 5, 1903, to the Bankruptcy Act, makes the appointment of a receiver of a State court because of insolvency an act of bankruptcy. In addition to the reasons stated in my original brief,

which support the view that that amendment was intended to apply to cases where a receiver had been appointed within four months of the passage of the act, is the fact that the original act expressly provided (sec. 70 b) that proceedings commenced under State insolvency laws before its passage should not be affected by it, while the amendatory act contains no such provision.

That the jurisdiction of the District Court is not seriously attacked, is shown by the fact that counsel for Watts unqualifiedly state (Fairleigh and Flexner's Brief, p. 15; Brief of same for Watts on Final Hearing, p. 26) that the question here is not as to the *right of possession*, but of *proper procedure;* and Mr. Miller, in the end, assumes practically the same position. (Original Brief, pp. 18-20; Supplemental Brief, p. 11.)

II.

According to my view of the facts, the question as to the authority of a bankruptcy court summarily to take property over which it has acquired jurisdiction from the possession of a State court or its officers, does not arise on this record. The District Court did not summarily seize the property of M. Zier & Co., but, as appears from the statements of the New Albany Trust Company, the receiver of the State court, and of the petitioner Watts, its attorney, the property was voluntarily surrendered to the receiver of the District court. The fact that the receiver of the State court was not authorized to make the transfer, does not affect the legality of the possession received by the

District Court, but was a matter wholly between the State court and its receiver. An order of the State court directing the surrender of the property could give the District Court no additional right to the possession. That right was already perfect.

III.

Assuming, however, for the sake of argument, that the property was summarily taken from the State court, it is apparent that, under the decisions of this court, summary action in such a case was authorized.

As heretofore stated, it is not asserted, as counsel have implied, that the rule of comity does not apply to bankruptcy cases. On the contrary, the importance of a due observance of that rule is fully recognized. But it is contended that the rule of comity has its limitations; that it is not so one-sided as to operate only on the Federal court, and that it ceases to apply when the State court becomes remiss in its duty, and fails to surrender property in its hands over which its jurisdiction has determined. In such a case, summary process to enforce the rightful jurisdiction of the Federal court is clearly justified.

Counsel urge that where the State court has ignored or refused the request made by the receiver of the United States court for the delivery of possession, the proper course is to appeal to the highest court of the State, and thence, if necessary, to this court. It would be curious, indeed, if the administration of the National Bankruptcy Law could be thus held up by a

State court. What would then become of the supremacy of the Constitution and laws of the United States? How does such weakness agree with the "incontrovertible principle," announced by this court, "that the Government of the United States may, *by means of physical force*, exercised through its official agents, execute on every foot of American soil the powers and functions that belong to it?" (*Ex parte Siebold*, 100 U. S., 395.)

In support of their view as to what constitutes "proper procedure" in a case of this kind, counsel rely on what was said in *Johnson* v. *Bishop* (1 Woolworth, 324). As already stated, that was a suit by an *assignee* in bankruptcy in the Federal court to obtain property belonging to the bankrupt from a State sheriff, the latter having taken it upon an attachment issued to him out of the State court before the proceedings in bankruptcy were commenced. As shown by paragraph 5 of the headnote to that case, under the act of 1867 the Federal courts did not have exclusive jurisdiction of actions in behalf of *assignees* in bankruptcy; and if their rights were not regarded in the State courts, their remedy was under the twenty-fifth section of the Judiciary act of 1789, giving an appeal to this court.

But the authority of *receivers* or *marshals* in bankruptcy is not to be measured by that of *assignees* under the act of 1867 or *trustees* under the present act.

In *Bardes* v. *Hawarden Bank* (178 U. S., 531), Mr. Justice Gray referred to the fact that the Bankruptcy

Act of 1867 made a distinction between proceedings in bankruptcy, instituted by the petition and ending in a distribution of assets among the creditors and the discharge of the debtor, and suits at law or in equity brought by or against the *assignee* in reference to the alleged property of the bankrupt. Of the former (the bankruptcy proceedings proper), the jurisdiction of the Federal courts was said to be exclusive; as to the latter (suits by or against assignees), their jurisdiction was concurrent with the State courts.

In the same case the court pointed out that the act of 1898 also recognized this "essential difference between proceedings in bankruptcy on the one hand and suits at law or in equity on the other," and it was held that *trustees* under that act, like assignees under the act of 1867, could not summarily proceed against third parties in the District Court to set aside an alleged fraudulent transfer of property made within four months of the filing of the petition in bankruptcy.

The further observation in that case, that courts of bankruptcy could hardly be considered as empowered by the provisions of the Bankruptcy Act to authorize *receivers* or *marshals* forcibly to seize property in the hands of adverse claimants, was stated to have been an inadvertence and therefore withdrawn in the subsequent case of *Bryan* v. *Bernheimer* (181 U. S., 189, 197); and the right of a bankruptcy court to direct a *receiver* summarily to seize property in the hands of a third party who *claimed* to hold adversely was asserted.

It seems plain, therefore, that in *Bryan* v. *Bernheimer*,

where the question as to the authority of the bankruptcy courts in the matter of the appointment of *receivers* or *marshals* was for the first time seriously considered, the court perceived that, since those particular officers were only to be appointed "*in case it is necessary for the preservation of the property of the bankrupt,*" the right to authorize them to proceed summarily might in some cases be absolutely essential to the accomplishment of that purpose.

In *White* v. *Schloerb* it was held that the District Court sitting in bankruptcy had authority, by summary proceedings, to compel the return of property taken from it on a writ of replevin from a State court, sued out after the jurisdiction of the District Court had attached.

It is true that in *Metcalf* v. *Barker* (187 U. S., 165) the court said that "this cautious utterance * * * sustains, as far as it goes, the *converse* of the proposition when presented by a different state of facts."

As to just what is the converse of the proposition announced in *White* v. *Schloerb*, courts as well as lawyers may find it difficult to agree. But it is manifestly absurd to say that it is presented in this case. In *White* v. *Schloerb* the District court, at the time of the seizure of the property by the State Court, not only had the possession of the property, but the *right* of possession as well. In the present case, at the time of the alleged seizure of the property by the District Court, the State court had absolutely *no right* of possession. In *this* respect it may indeed be said that this case is the converse of *White* v. *Schloerb*.

IV.

Whether the manner in which the District Court obtained possession of the property be open to criticism or not, such possession, being coupled as it was with the exclusive right thereto, could not afterwards be disturbed, even by the court from which it was taken, unless it be that two wrongs make a right. In no case has it been held that a court which has been summarily dispossessed by another court having the exclusive right of possession, may retake what it has no further right to hold. It is futile to say that the "constructive possession" remained in the State court. Constructive possession is necessarily dependent on the right of possession, and at the time of the recaption, the right of possession, as well as the actual possession, was in the District Court.

V.

The facts of this case plainly show not only that the surrender of the property in dispute was voluntarily made by the receiver of the State court, but that the District Court would have been justified, if that had not been done, in summarily seizing the property. The attitude of the State court toward the Federal court is indicated by the order of January 24 enjoining the creditors of M. Zier & Co. from proceeding in any other court. This order undoubtedly was made for the express purpose of preventing proceedings in bankruptcy. When, therefore, the action of the State court in postponing for three weeks any *consideration* even of the petition of Connor, the

receiver of the District Court for the delivery of the property, is read in the light of this order of the State court, as well as its order of February 14, made shortly after the filing of that petition, enjoining Connor and the petitioning creditors in the bankruptcy suit, and ruling the latter for contempt, a deliberate attempt to defeat the jurisdiction of the District Court is evident. Surely in such case comity ceases to be a virtue, and recourse to the strong arm of the law for the purpose of upholding the Federal authority would be justified.

The necessity for prompt and forcible action by the Federal courts, in order to enforce the provisions of the National Bankruptcy Law, when one exists, even as against the State courts, is recognized by section 720 of the Revised Statutes, which provides:

> The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, *except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy.*

Among the powers conferred upon the courts of bankruptcy by section 2 of the act of 1898, are—

> to (15) *make such orders, issue such process*, and enter such judgments, in addition to those specifically provided for, *as may be necessary for the enforcement of the provisions of this act.* (30 Stat., 546.)

And the Twelfth General Order in Bankruptcy provides:

> 3. Applications * * * *for an injunction to stay proceedings of a court* or officer of the

> United States, *or of a State*, shall be heard and decided by the judge.

Clearly then, when the law itself and the rules of this court make such a marked distinction between bankruptcy and other proceedings in the courts of a State, and expressly authorize the Federal courts to enforce their jurisdiction in bankruptcy by summary proceedings, the rule of comity in bankruptcy cases, where the property is sought by a receiver and not by an assignee, can not be the same as that which applies in other cases. A forced conception of what constitutes "proper procedure" should not, therefore, be allowed to defeat the Federal jurisdiction.

HENRY M. HOYT,
Solicitor-General.

APRIL 24, 1903.

O

FILE COPY.

1st Orig.

Office Supreme Court U.
FILED
MAR 23 1903
JAMES H. McKENNEY,
Clerk.

In re Watts, Pet'r.

Exhibit A, B & C, filed with Petition.

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APPENDIX 1.

Exhibit A.

STATE OF INDIANA, } *Set.*
FLOYD COUNTY, }

BE IT REMEMBERED That on the 30th of December, 1902, the following complaint was filed in the office of the Clerk of the Floyd Circuit Court, to-wit:

STATE OF INDIANA, } *ss.*
FLOYD COUNTY, }

IN THE FLOYD CIRCUIT COURT.

JOSEPH T. RYERSON & SON, ... *Plaintiff,*

VS.

M. ZIER & CO., ... *Defendant.*

The plaintiff, Jos. T. Ryerson & Son, complaining of the defendant, M. Zier & Co., for first paragraph of complaint says that the plaintiff, Jos. T. Ryerson & Son is a corporation organized under the laws of the State of Illinois and that said defendant, M. Zier & Co. is a corporation organized

under the laws of the State of Indiana; that heretofore, to-wit: on the 15th day of October, 1901, the said defendant, M. Zier & Co. by its promissory note, a copy of which is filed herewith and made part of this paragraph of comp'aint marked Exhibit "A," promised to pay to the plaintiff Joseph T. Ryerson & Son by name of J. T. Ryerson & Son the sum of $3461.70, sixth days after said date with interest at seven per cent. from and after maturity until paid and attorneys' fees. That said note is due and remains wholly unpaid. Plaintiff further avers that said defendant, M. Zier & Company, is insolvent; that said defendant is indebted in a large amount of money to divers persons and corporations, to-wit, in the sum of $65000.00; that it is unable to meet its said obligation and that its creditors are threatening to enter suits against it; that the property and assets of said defendant corporation consist of a manufacturing plant in the City of New Albany, which is in operation and is now engaged in filling unfinished orders and working on unfinished contracts. That said defendant is now without means or money with which to continue the operation of said business. That if suits are instituted against said defendant and its property seized upon an execution or attachment the assets will be dissipated and the plant of the defendant be rendered of much less value to its creditors generally than if the said property be properly prese ved; that the property fund and profits of the business of said defendant are in danger of being lost and materially injured and destroyed unless a Receiver be immediately appointed to take charge of said property and hold the custody and possession thereof and to preserve the same until plaintiff's cause can be determined and until such further orders shall be made in this proceeding as the Court shall deem proper and necessary.

WHEREFORE plaintiff says that it is necessary that a Receiver be appointed to take charge of the property of

said defendant; that an emergency exists for the immediate appointment of said Receiver by the Judge of this Court, and it prays that said Receiver be appointed at once and that he be invested with such power and authority as the Court shall deem proper under the circumstances.

Said plaintiff for second paragraph of complaint against said defendant says that heretofore, to-wit: on the 15th day of October, 1901, the said defendant M. Zier & Co., by its promissory note, a copy of which is filed wi h and made part of this paragraph of complaint marked Exhibit "B," promised to pay to the plaintiff, Jos. T. Ryerson & Son by name of J. T. Ryerson & Son, the sum of $3470.26, seventy-five days after said date with interest at seven per cent. from and after maturity until paid and attorneys' fees. That said note is due and remains wholly unpaid. Plaintiff further avers that said defendant, M. Zier & Co. is insolvent; that said defendant is indebted in large a amount of money to divers persons and corporations, to-wit: in the sum of $65-000.00; that it is unable to meet said obligations and that its creditors are threatening to enter suits against it; that the prope ty and assets of said defendant corporation consist of a manufacturing plant in the City of New Albany, which is in operation and is now engaged in filling unfinished orders and working on unfinished contracts. That said defendant is now without means or money with which to continue the operation of said business. That if suits are instituted against sa'd defendant and its property seized upon an execution or attachment the assets will be dissipated and the plant of the defendant be rendered of much less value to its creditors generally than if the said property be properly preserved; that the property fund and profits of the business of said defendant are in danger of being lost and materially injured and destroyed unless a Receiver be

immediately appointed to take charge of said property and hold the custody and possession thereof and to preserve the same until plaintiff's cause can be determined and until such further orders shall be made in this proceeding as the Court shall deem proper and necessary.

WHEREFORE plaintiff says that it is necessary that a Receiver be appointed to take charge of the property of said defendant; that an emergency exists for the immediate appointment of said Receiver by the Judge of this Court; and it prays that said Receiver be appointed at once, and that he be invested with such power and authority as the Court shall deem proper under the circumstances.

Said plaintiff for third paragraph of complaint against said defendant says that heretofore, to-wit: on the 24th day of October, 1902, the said defendant M. Zeir & Co. by its promissory note, a copy of which is filed with and made part of this paragraph of complaint marked exhibit "C" promised to pay to the plaintiff, Jos. T. Ryerson & Son by name of Joseph T. Ryerson & Co, the sum of $1043.14 fifteen days after said date with interest at Seven per cent. from and after maturity until paid and attorneys' fees. That said note is due and remains wholly unpaid. Plaintiff further avers that said defendant, M. Zier & Co., is insolvent; that said defendant is indebted in a large amount of money to divers persons and corporations, to-wit: in the sum of $65000.00; that it is unable to meet its said obligations and that its creditors are threatening to enter suits against it; that the property and assets of said defendant corporation consist of a manufacturing plant in the City of New Albany, which is in operation and is now engaged in filling unfinished orders and working on unfinished contracts. That said defendant is now without means or money with which to continue the operation of said business. That if suits are

instituted against said defendant and its property seized upon an execution or attachment the assets will be dissipated and the plant of the defendant be rendered of much less value to its creditors generally than if the said property be properly preserved; that the property fund and profits of the business of said defendant are in danger of being lost and materially injured and destroyed unless a Receiver be immediately appointed to take charge of said property and hold the custody and possession thereof and to preserve the same until plaintiff's cause can be determined and until such further orders shall be made in this proceeding as the Court shall deem proper and necessary.

WHEREFORE plaintiff says that it is necessary that a Receiver be appointed to take charge of the property of said defendant that an emergency exists for the immediate appointment of said Receiver by the Judge of this Court, and it prays that said Receiver be appointed at once, and that he be invested with such power and authority as the Court shall deem proper under the circumstances.

Said plaintiff for fourth paragraph of complaint against said defendant, says that heretofore, to-wit on the 15th day of October, 1901, the said defendant, M. Zier & Co. by its promissory note, a copy of which is filed with and made part of this paragraph of complaint marked Exhibit "D," promised to pay to the plaintiff, Jos. T. Ryerson & Son by name of J. T. Ryerson & Son, the sum of $3478.84, ninety days after said date with interest at Seven per cent. from and after maturity until paid and attorneys' fees. That said note is due and remains wholly unpaid. Plaintiff further avers that said defendant, M. Zier & Company, is insolvent; that it is unable to meet its said obligations and that its creditors are threatening to enter suits against it; that the property and assets of said defendant corporation consist of a

manufacturing plant in the City of New Albany, which is in operation and is now engaged in filling unfinished orders and working on unfinished contracts. That said defendant is now without means or money with which to continue the operation of said business. That if suits are instituted against said defendant and its property seized upon an execution or attachment the assets will be dissipated and the plant of the defendant be rendered of much less value to its creditors generally than if the said property be properly preserved; that the property fund and profits of the business of said defendant are in danger of being lost and materially injured and destroyed unless a Receiver be immediately appointed to take charge of said property and hold the custody and possession thereof and to preserve the same until plaintiff's cause can be determined and until such further orders shall be made in this proceeding as the Court shall deem proper and necessary.

WHEREFORE plaintiff says that it is necessary that a Receiver be appointed to take charge of the property of said defendant; that an emergency exists for the immediate appointment of said Receiver by the Judge of this Court, and it prays that said Receiver be appointed at once, and that he be invested with much power and authority as the Court shall deem proper under the circumstances.

Said plaintiff for fifth paragraph of complaint against said defendant says that heretofore, to-wit: on the 2nd day of December, 1901, the said defendant, M. Zier & Co. by its promissory note, a copy of which is filed with and made part of this paragraph of complaint marked Exhibit "E," promised to pay to the plaintiff, Jos. T. Ryerson & Son by name of J. T. Ryerson & Son, the sum of $3000.00, sixty days after said date with interest at Seven per cent. from and after maturity until paid and attorneys' fees. That

said note is due and remains wholly unpaid. Plaintiff further avers that said defendant, M. Zier & Co., is insolvent; that said defendant is indebted in a large amount of money to divers persons and corporations, to wit: in the sum of $65000.00; that it is unable to meet its said obligations and that its creditors are threatening to enter suits against it; that the property and assets of said defendant corporation consist of a manufacturing plant in the City of New Albany, which is in operation and is now engaged in filling unfinished orders and working on unfinished contracts. That said defendant is now without means or money with which to continue the operation of said business. That if suits are instituted against said defendant and its property seized upon an execution or attachment the assets will be dissipated and the plant of the defendant be rendered of much less value to its creditors generally than if the said property be properly preserved; that the property fund and profits of the business of said defendant are in danger of being lost and materially injured and destroyed unless a Receiver be immediately appointed to take charge of said property and hold the custody and possession thereof and to preserve the same until plaintiff's cause can be determined and until such further orders shall be made in this proceeding as the Court shall deem proper and necessary.

WHEREFORE plaintiff says it is necessary that a Receiver be appointed to take charge of the property of said defendant; that an emergency exists for the immediate appointment of said Receiver by the Judge of this Court, and it prays that said Receiver be appointed at once, and that he be invested with such power and authority as the Court shall deem proper under the circumstances.

WHEREFORE said plaintiff demands judgment against said defendant for the sum of $15000.00 and prays for the

appointment of a Receiver to charge and possession of the property funds and assets of said defendant, and that the Court shall make such orders as shall be necessary and proper for the preservation of said property for the continuance of said business for the purpose of completing unfinished contracts, and such other and further orders as the Court shall deem necessary and proper.

W. W. & J. R. WATTS,

Attorneys for Plaintiffs.

EXHIBIT "A."

Dec. 17th

$3461.70 $3461‡ New Albany, Ind., Oct. 15–1901

Sixty days after date we promise to PAY TO THE ORDER OF J. T. RYERSON & SON THIRTY-FOUR HUNDRED SIXTY-ONE & 70-100 DOLLARS.

NEGOTIABLE AND PAYABLE AT

Copy. NEW ALBANY NATIONAL BANK.

Without any relief whatever from Valuation or Appraisement Law, for value received, with interest at Seven per cent. per annum from and after maturity until paid, and Attorneys Fees. The drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of this note.

No. 828 M. ZIER & Co.

Due Dec. 17. By H. E. Eury,

Charged E. H. *Secy.*

EXHIBIT "B."

Jan. 1st, 1902.

$3470.26 $3470‡ New Albany, Ind., Oct. 15–1901.

Seventy-five days after date we promise to PAY TO THE ORDER OF J. T. RYERSON & SON THIRTY-FOUR HUNDRED SEVENTY & 26-100 DOLLARS.

NEGOTIABLE AND PAYABLE AT THE
NEW ALBANY NATIONAL BANK.

Without any relief whatever from Valuation or Appraisement Law, for value received, with interest at Seven per cent. per annum from and after maturity until paid, and Attorneys Fees. The drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of this note.

No. 829 M. ZIER & Co.

Due Jan. 1, 1902. By H. E. Eury,

Charged Back. *Secy.*

Copy.

EXHIBIT "C."

$1043.14 New Albany, Ind., Oct. 24, 1902.

Fifteen days after date, we promise to PAY TO THE ORDER OF JOSEPH T. RYERSON AND CO. TEN-HUNDRED AND FORTY-THREE 14-100 DOLLARS.

NEGOTIABLE AND PAYABLE AT THE

Copy. NEW ALBANY NATIONAL BANK.

Without any relief whatever from Valuation or Appraisement Law, for value received, with interest at Seven per cent, per annum from and after maturity, until paid, and Attorneys Fees. The drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of this note.

No. 1729. M. Zier & Co.

Due Nov. 11-02. By M. Zier,

Charged Back Dec. 2-02. B. S. *V. Pres. & Treas.*

EXHIBIT "D."

Jan. 16th.

$3478.84 $3478‡ New Albany, Ind., Oct. 15, 1901.

Ninety days after date we promise to PAY TO THE ORDER OF J. T. RYERSON & SON, THIRTY-FOUR HUNDRED SEVENTY-EIGHT & 84-100 DOLLARS.

NEGOTIABLE AND PAYABLE AT THE

Copy. NEW ALBANY NATIONAL BANK.

Without any relief whatever from Valuation or Appraisement Law, for value received, with interest at Seven per cent per annum from and after maturity until paid, and Attorneys Fees. The drawers and endorsers severally waive presentment for payment, protest and notice of protest and non-payment of this note.

No. 830 M. ZIER & CO.

Due Jan. 16, 1902. By H. E. Eury,

Charged Back E. H. *Secy.*

EXHIBIT "E."

$3000.00 $3000‡ New Albany, Ind., Dec. 2-1901.

Sixty days after date we promise to PAY TO THE ORDER OF J. T. RYERSON & SON, THREE-THOUSAND & 00-100 DOLLARS.

NEGOTIABLE AND PAYABLE AT THE
NEW ALBANY NATIONAL BANK.

Copy.

Without any relief whatever from Valuation or Appraisement Law, for value received, with interest at Seven per cent. per annum from and after maturity until paid, and Attorneys Fees. The drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of this note.

Charged Back E. H. M. ZIER & CO.
No. 942 By M. Zier,
Due Feb. 3, 1902. *V. Pres. & Treas*

Upon which complaint the following summons was issued to-wit:

THE STATE OF INDIANA.

TO THE SHERIFF OF FLOYD COUNTY, GREETING:

We command you to summon

M. ZIER & CO.

if it be found in your bailwick, personally to appear before the Honorable Floyd Circuit Court, on the second day of the next term thereof, to be holden at the Court House in

the City of New Albany, on the Second Monday of January, 1903, then and there to answer the complaint of

JOS. T. RYERSON & SON

and of this writ make due service and return.

Witness CHARLES B. SCOTT, Clerk of said Court, and the Seal thereof hereto affixed at the Court House in New Albany, Indiana, this 30th day of December 1902.

CHARLES B. SCOTT,
Clerk Floyd Circuit Court.

By William F. Ruoff,
Deputy.

[SEAL.]

Came to hand December 30th 1902 at 3 o'clock P. M. Served as commanded on the within named M. Zier & Co. by reading this writ to and in the presence and hearing of Michael Zier, Vice President and Treasurer of the M. Zier & Co., there being no President of the said M. Zier & Co. found in my bailwick. Done in Floyd County, Indiana, this 30th day of December 1902.

LOUIS C. HIPPLE,
S. F. Co.

Fees $1.00.

AND afterwards at Chambers In Vacation of said Floyd Circuit Court on the 30th day of December 1902 before the Hon. William C. Utz Sole Judge among other the following proceedings were had to-wit:—

"FLOYD CIRCUIT COURT,

IN VACATION.

Jos. T. Ryerson & Son;
Plaintiff,
vs.
M. Zier & Co.,
Defendant.
} Order appointing Receiver.

This day came the plaintiff Jos. T. Ryerson & Son, by W. W. & J. R. Watts, attorneys and enter a motion herein to appoint a Receiver herein to take charge of the assets of the defendant corporation and preserve the same under the orders of this Court as shall from time to time be made.

And came the defendant M. Zier and Company by M. Zier its President and by Jewett & Jewett attorneys and entered their appearance to the complaint herein and to the motion for the appointment of a Receiver.

And the parties by counsel having been heard and the pleadings herein being before the Court, and the Court being sufficiently advised it is considered by the Court that said motion shall be sustained and it is now hereby so adjudged and ordered.

It is further ordered and adjudged that The New Albany Trust Company be and it is hereby appointed Receiver of said M. Zier and Company to take charge and possession of all assets of said M. Zier & Company of whatever nature or wheresoever situated and hold and preserve the same subject to the further orders of the Court.

Said Receiver shall report at the next term of Court at as early day as is practicable an Inventory of all the assets coming to his hands and shall then report any recommendations he may have to make with respect to said estate, its conduct and its operation.

Said Receiver shall proceed to collect any moneys or other property due, or to become due to said estate and as

far as may be, shall continue the business of said M. Zier & Company and shall fulfill and complete any contracts now on hand and incompleted and until the further order of the Court shall continue the operation of said business as nearly as may be, as a going concern with power to employ such reasonable amount of help therein as may be necessary and to employ counsel to advise with and assist him in the conduct of its trust.

Said receiver is further authorized to make purchases of any necessary materials or any material or other goods necessary in the conduct of said business not to exceed in all, without further order of Court the total sum of $2500.00.

Said Receiver shall insure the property in this estate in such sum as said Receiver deems reasonable not however to exceed the sum of $10000.00. Said Receiver is further authorized and empowered to purchase such indemnity insurance against accident to employees as said Receiver may deem nesessary.

Before entering upon the duties of said Receivership, said Receiver shall, as required by law, take the oath of office for the faithful discharge of the duties of said Receivership and obedience to the orders of this Court, or the Judge thereof. Whereupon came the New Albany Trust Co., the Receiver herein and took the oath of office as required by law and accepted said trust.

Said Receiver is further authorized and empowered to sue and defend in its own name as Receiver any suits necessary to be prosecuted or defended for the protection or enforcement of the trust herein.

And power and jurisdiction is hereby reserved to enlarge, amend or restrict the duties and powers of said Receiver from time to time as may be deemed necessary.

December 30th, 1902. WILLIAM C. UTZ,

Judge."

AND afterwards In Vacation, at Chamber of said Floyd Circuit Court on the said 30th day of December, 1902, before the Hon. William C. Utz, Sole Judge among other the following proceedings were had to-wit:—

Joseph T. Ryerson & Son,
vs.
M. Zier & Co. } In Vacation.

Come now the New Albany Trust Company and files in the office of the Clerk of Floyd County Court its acceptance in writing as receiver together with the oath required by the appointment herein endorsed thereon, which reads as follows:

"STATE OF INDIANA,
County of Floyd. } *ss.*

I, Fred Sauer, Secretary of the New Albany Trust Company, for and on behalf of said Company, do hereby accept the appointment of Receiver in the cause now pending in the Floyd Circuit Court, wherein the Joseph T. Ryerson & Son is plaintiff and the M. Zier & Co. is defendant, and do hereby solemnly swear that The New Albany Trust Company as such Receiver will faithfully and honestly discharge the duties of said receivership in obedience to the orders of the Floyd Circuit Court and of the Judge thereof.

FRED SAUER.

Subscribed and sworn to before me, this 30th day of December 1902

CHARLES B. SCOTT,
Clerk F. C. C.
By William F. Rouff,
Deputy."

AND afterwards, In Vacation, At Chambers of the Floyd Circuit Court on the 3rd day of January 1903, before the Hon.

William C. Utz, Sole Judge among other the following proceedings were had to-wit:—

Joseph T. Ryerson and Son,
vs.
M. Zier & Co. } In Vacation.

Comes now the New Albany Trust Company, receiver in the above matter, and presents to the Judge of the Floyd Circuit Court, in Chambers its verified petition, which is in words and figures following:—

IN THE FLOYD CIRCUIT COURT.

"STATE OF INDIANA, } ss.
County of Floyd.

Jos. T. Ryerson and Son,
vs.
M. Zier & Company.

The New Albany Trust Company, receiver in the above entitled cause, respectfully reports to the Court that at the time of the appointment of this receiver, said M. Zier and Company was indebted to workmen, being machinists, boilermakers and other persons engaged in manual and physical labor in and about the plant of said concern for three days to-wit:— December 27, 29 and 30th that an itemized statement of such indebtedness if filed with and made part of this petition and referred to as Exhibit "A" that said M. Zier & Co. being a corporation and being insolvent at the time of the appointment of this Receiver; that this receiver believes that said amount due for wages is a preferred claim against the assets in its hands; that said sums except two items hereinafter referred to are due to mechanics and

laborers who are dependent upon their daily labor and wages for their support, and it would be a hardship for said persons to be compelled to file their claims individually and await the settlement of the estate for their payment; that to file said claims separately would involve not only delay but would increase the expense of the Administration of the trust, and that this Receiver is willing to advance sufficient money on account of said trust to pay said labor claim if the Court shall so direct and order them to be paid by the Receiver as preferred claims against the assets in its hands.

That the only two items in said statement attached hereto, which are regarded as being doubtful, preference and priority, are the three days of M. Zier, who is the Vice-President of said Company, amounting to $16.00 and three days for J. E. Eury who was the Secretary of said Company amounting to $15.00.

This Receiver therefore asks the direction an order of the Court in the matter.

Respectfully submitted,
THE NEW ALBANY TRUST COMPANY,
By Fred Sauer.

Fred Sauer, being shown on his oath says that he is the Secretary of the New Albany Trust Company and makes this affidavit on behalf of said Company; that the statements contained in the foregoing petition are true in substance and fact as he verily believes.

FRED SAUER.

Subscribed and sworn to before me this 3rd day of January 1903.

ELIZA A. TABLER,
Notary Public.

[SEAL.]

My Commission expires Oct. 7, 1906.

EXHIBIT "A"

PAY ROLL FOR M. ZIER & CO.

Beginning Dec. 27th ending 30th, 1902.

NAME.	HOURS.	RATE.	AMOUNT.
Allard	27	.19	$5 13
Armstrong	27	.15	4 05
Atkins, C	27	.12½	3 37
Atkins, W. A	13	.12½	1 62
Boersig, Geo	27	.24	6 48
Boersig, Ed	27	.05	1 35
Bruder, Harry	28	.16	4 48
Bruder, O	54	.14	7 56
Buckingham	27	.25	6 75
Bryant, Joe	27	.11	2 97
Bryant, John	27	.13½	3 65
Bybee	27	.12½	3 37
Cleveland	27	"	3 37
Carpenter	18	.06	1 08
Dixon, C	27	.08	2 16
Duvall, Joe	27	.17½	4 75
Duvall, Jim	27	.12½	3 37
Dunn	27	"	3 37
Cookingdoffer	27	.05	1 35
Elliott	27	.05	1 35
Embry	49	.22½	11 03
Frederick	27	.15	4 05
Guthrie	18	.20	3 60
Gray	27	.15	4 05
Hopkins	27	.12½	3 37
Higgins	29	"	3 63
Hammer	20	"	2 50
Long, Sr	27	.20	5 40

NAME.	HOURS.	RATE.	AMOUNT.
Long, H	27	.10	2.70
Long, R	31	.24	7.44
Lines	27	.27½	7.43
Maupin	9	.12½	1.13
Miller, W. H	27	.27½	7.43
Miller, John	37	.12½	4.63
McKenna	27	.25	6.75
Monical	27	.15	4.05
McIntyre	27	.06	1.62
Stone, L	27	.22	5.94
Stone, Ed	27	.15	4.05
Sinkhorn	27	.12½	3.37
Schmitt	30	.17½	5.25
Story, Lewis	27	.12½	3.37
Schlageter	19	"	2.38
Sarles	27	.05	1.35
Schuler	27½	.12½	3.43
Scales, Joe	27	.07½	2.03
Veron, Joe	27	.17½	4.73
Van Winkle	27	.22½	6.08
Vernia	28	.12½	3.50
Widman, Jr	18	.07	1.26
Widman, Sr	27	.25	6.75
Weidman	27	.11	2.97
Welz, Geo	47	.06	2.82
Wells, C	27	.06	1.62
Ward	27	.12½	3.37
Wehner	30	.06	1.80
Young	45	.25	11.25
Raglon	27	.17½	4.73
Baugh	9	.10	.90
Brazil	27	.22½	6.08

NAME.	HOURS.	RATE.	AMOUNT.
Foust	14	23	3 22
Dixon	40	12½	5 00
Woodfill	31	13½	4 19
Beard	5	10	50
Davison	27	17½	4 73
Duvall, Bwn	27	22½	6 08
Sarles	19½		1 33
Leaf	14	12½	1 75
Fogle	18	10	1 80
Austin	18	12½	2 25
Walters	20	17½	3 50
Normally, M	20	14	2 80
Normally, Jim	20	17½	3 50
Hughes, Jim	20	14	2 80
Slattery	20	23	4 60
Moore	14	15	2 10
Buckingham, Cin. Job, 73 hrs. time 25c per hour		$18 75	
Drew from office		9 45	
			8 80
Foust, Geo., McHenry Job, 440 hrs. time 23c per hour		$101 20	
Drew from office		68 83	32 37
Zier, M., 3 days			19 00
Eury, H. E., "			15 00
Eury, J. G., "			6 00
Zier, L. M., "			2 00
Zier, Ed., "			1 00
TOTAL			$372 72

And the Court being satisfied it will be to the interest of said trust to pay the persons named in the pay roll attached to said petition the several amounts due them for wages for

labor performed for such insolvent corporation for the three days immediately preceeding the appointment of said Receiver for manual labor performed by said employees, it is now therefore ordered by the Judge of said Court that the said New Albany Trust Company as Receiver of the M. Zier and Company pay to the persons named in the pay-roll attached to the petition herein, the several amounts due them (except to M. Zier and H. E. Eury officers of said Company) the aggregate amount to be paid under this order being the sum of $341.72 and that upon making such payment said Receiver shall be subrogated to the performance and lien claimed and held by said laborers, mechanics and machinists for their said several claims as preferred creditors, and shall be allowed credit therefor in its accounts as and for the payment of a preferred claim.

Dated this 3rd day of January, 1903.

WILLIAM C. UTZ,
Judge Floyd C. C.

And afterwards in vacation of said Floyd Circuit Court on the 9th day of January, 1903, the following petition was filed to-wit:—

FLOYD CIRCUIT COURT.

STATE OF INDIANA, }
County of Floyd. }

Joseph T. Ryerson & Son,
Plaintiff.
vs.
M. Zier & Company,
Defendants.

PETITION OF RECEIVER FOR INSTRUCTIONS AS TO CONTRACT WITH ANGUILLA COTTON OIL COMPANY.

Comes the New Albany Trust Company, Receiver of M. Zier & Company, under order of this Court in the above

styled cause, and for its report and petition of its action thereon, it submits to the Court the following facts concerning a contract between M. Zier & Company and the Anguilla Cotton Oil Company, and asks the instructions of this Court, to-wit:—

That heretofore a contract was entered into between M. Zier & Company and the Anguilla Cotton Oil Company whereby it was agreed that for the sum of $3245.00, said M. Zier & Company should construct and set up for the said Anguilla Company at its plant in the State of Mississippi, ten certain specified tanks, made of iron, for which the said Zier Company was to receive, upon the satisfactory setting up of said tanks, the total sum of $3245.00; that in pursuance of said contract, the said Anguilla Company, advanced and paid to the said Zier Company the total sum of $1,081.67, and the same has been credited on the books of the said Zier Company to the account of the said Anguilla Company; that since the appointment of the receiver herein, the said Anguilla Company has made demand of the receiver that it fulfill the contract of the said Zier Company, but because of the complications of the receivership with respect to the payment of the said money theretofore to the said Zier Company, and because of the large expense which will be necessary in the payment of freight and the setting up of said tanks in Mississippi, this petitioner has been in doubt as to what it should do; that after consultation with the representatives of the Anguilla Company and the said M. Zier Company, it has finally agreed upon the settlement of the matter upon the following conditions, to-wit:—

There are eight of said tanks of a certain size which are now ready for shipment. There are two additional tanks of a larger size yet to be built. The cost and expense of shipment and setting up of all of said tanks would range

from $850.00 to $1100.00, as estimated by said Zier Company and the said Anguilla Company shall receive at New Albany on board the cars, eight tanks now ready for shipment and the two tanks hereafter to be completed. That from said $3245.00, the original contract price, there shall be deducted the sum of $850.00, as an allowance to said Anguilla Company, for the payment of freight and setting up of said tanks in said State of Mississippi, so that when the matter is finally disposed of said Anguilla Company shall have credit for said sum of $850.00 and said $1081.67 already paid, or a total of $1931.67, and will pay this petitioner the sum of $1313.33. Said $1313.33 is to be paid to this petitioner, as stated, upon delivery of said tanks to said cars at New Albany, and the same shall be paid in such installments as the tanks shipped respectively bear to the total amount to be paid; that is to say that upon the shipment of the eight tanks, said Anguilla Company shall pay the proportionate value thereof out of $1313.33, to wit: $843.87, and upon the shipment of the other two tanks the remainder thereof shall be paid.

Your petitioner would further show to the Court that it believes this settlement of the matter is for the best interests of the estate. That the metal making up said tanks has been cut for special sizes under the terms of the contract, and that unless this plan of settlement is carried out, great loss will result to the estate herein, and it now recommends that it be instructed and ordered to carry out the settlement as agreed upon as stated; that said agreement has been made subject to the approval and ratification of the Court.

WHEREFORE Your petitioner prays that it have an order accordingly, and for all further and other proper relief.

W. W. & J. R. WATTS,

Attorneys for New Albany Trust Company, Receiver.

Fred Sauer says he is the Secretary of the New Albany Trust Company, Receiver of M. Zeir & Company, and that he has active charge of the management of the Receivership of M. Zier & Company, and is fully acquainted with the facts stated in the foregoing petition, and that the facts there stated are true.

FRED SAUER.

Subscribed and sworn to by Fred Sauer before me this 9th day of Jan'y, 1903.

CHARLES B. SCOTT,
Clerk F. C. C.

(Filed Jan. 9, 1903. CHARLES B. SCOTT, *Clerk F. C. C.*)

AND upon the filing of the foregoing petition, In Vacation at Chamber of said Floyd Circuit Court on the said 9th day of January, 1903 before the Hon. William C. Utz, Sole Judge among other the following proceedings were had to wit:—

FLOYD CIRCUIT COURT,
IN VACATION.

STATE OF INDIANA, }
County of Floyd. }

Joseph T. Ryerson & Son, *Plaintiff.*
M. Zier & Company, *Defendant.* } Order.

This day came New Albany Trust Company, receiver of M. Zier & Company by W. W. and J. R. Watts its attorneys, and files its petition herein seek'ng the advice and instruction of the Court concerning the disposition of the contract between M. Zier & Company and the Anguilla Cotton Oil Company and certain tanks made thereunder and the Court being fully advised and it appearing to be

for the best interests of the estate herein, it is now hereby ordered that the Receiver herein shall deliver to the Anguilla Cotton Oil Company on the cars at New Albany, Indiana the ten tanks contracted for under said contract, at such times as the same may be completed by the Receiver herein and upon the payment of $1,313.33 to said Receiver. And it appears to the Court that eight of said tanks are now completed, the same shall be immediately delivered to said cars upon the payment to the said Receiver of so much of said cash as the value of said tanks under said contract bear to the whole of said sum of $1,313.33 to-wit: $844.87 and that when said other two tanks are completed they shall be delivered to said cars upon the payment to said Receiver of the balance of said total sum of $1,313.33 to-wit: $469.46 then remaining unpaid.

January 9th, 1903. WILLIAM C. UTZ,
Judge.

And afterwards at the January Term, 1903 of said Floyd Circuit Court on the 16th day of January, 1903, the Honorable William C. Utz, presiding, the following Report and Petition was filed in open Court, to-wit:—

FLOYD CIRCUIT COURT

Joseph T. Ryerson & Son, *Plaintiff.*
vs.
M. Zier & Company, *Defendant.*

REPORT AND PETITION OF NEW ALBANY TRUST CO., RECEIVER.

Comes the New Albany Trust Company, Receiver herein and files this its report and petition herein, to-wit:

I.

Immediately upon it appointment and qualification herein, it took possession of the office and plant of M. Zier & Company in New Albany, and found therein a lot of office furniture and fixtures, a lot of machinery and tools, a lot of merchandise or material, the books of account of M. Zier & Company, and the accounts therein. It then proceeded with an inventory of the property coming to its hands with an appraisement thereof by Wm. M. Mix and S. J. Gardner, residents and householders of the City of New Albany, who were sworn to return a true, just and correct valuation of all the property, credits, rights and demands of the said M. Zier & Company, as exhibited by and coming to the hands of this Receiver. The petitioner now files herewith as a part hereof said inventory and appraisement and shows the following summary of the items therein contained, to-wit:—

Value of machinery, tools, etc	$ 6,410.50
Value of merchandise or material	8,572.77
Value of office furniture and fixtures	188.00
Value of accounts owing M. Zier & Co. considered good and collectable	9,286.37
Value of accounts owing to M. Zier & Co. doubtful of collection	3,877.17
Value of lease hold	100.00
TOTAL	$28,434.81

As a part of the assets of this estate considered by the appraiser, but not included in above, there are a number of contracts between M. Zier & Company and other persons wherein the said M. Zier & Company have heretofore agreed to supply certain material and labor for certain sums of

money specified, and petitioner, now, refers to that part of said inventory marked "Estimated Value of Unfinished Contracts," wherein these matters are set forth. Some of said contracts were partially filled, but there is yet more labor and material to be furnished on them before all of the money consideration therefor shall be paid by the debtors. On some other of said contracts, none of the material has been delivered though some labor has been performed in making up the material, and other labor and said material is yet to be furnished by said M. Zeir & Company before the consideration thereof shall be paid. On others of said contracts said M. Zier & Company have heretofore received substantial sums of money advanced on account thereof, and this Receiver is in some doubt as to what he shall do with respect to the fulfillment of such contracts, to-wit:

First.—There is a contract with Grainger & Company of the City of Louisville, Kentucky, for the erection of two cold storage tanks. Granger & Company are to pay the total sum of $860.00 therefor on completion thereof. The Material has been delivered to Grainger & Company's premises for the purpose of completing said contract, and there is yet about the sum of $200.00 of labor &c to be put upon said work to complete same. It appears now that said Grainger & Company will set off against the money consideration moving from them on said contract. With respect to this contract, the Receiver is going ahead with its completion, and for the purpose of having paid to it such money as is the difference between the amount of said advancement and the total sum Grainger & Company agreed to pay.

Second.—J. E. & F. Walter agreed to pay M. Zier & Company $1,750.00 for two 66 inch boilers and attachments as specified in the agreement. Said boilers and attachments are now in the course of building, but it will require the

expenditure of about $500.00 more than has already been spent to put them in a state of completion whereupon the balance of the money coming from J. E. & F. Walter may be paid. But it appears that the said Walters have advanced to the said M. Zier & Company the sum of $1,000 on said contract, and, inasmuch, as nothing on said contract has been delivered to the said Walters, this petitioner is advised that the said Walters stand in the position of creditor of said M. Zier & Company, only. And, in so much as the completion of said contract can only be done at a great loss to this estate, this Receiver recommends that it be instructed to report some new arrangement with said Walters rather than that it carry out the old contract.

Third.—Houston, Stanwood & Gamble Company contracted with said M. Zier & Company for two 66 inch by 18 feet, and one 66 inch by 16 feet boilers, said Houston, &c. to pay the total sum of $1,316.95 therefor. After the completion of said boilers, the same were billed to said Houston &c., said bill showing the number of said boilers. Same were left in the yard of M. Zier & Company as was customary between the parties; they were treated as the property of the said Houston &c. who paid $1,000.00 on account of said contract. It was customary between the parties to have boilers made and to let them lie in said yards until shipped according to the order and instructions of the said Houston &c. Petitioner is advised that the said property belongs to the said Houston &c. upon the payment by them of the balance owing upon said contract, to-wit: $316.95.

Fourth.—M. Zier & Company agreed to build for J. B. Speed & Company at Speeds, Indiana, a cement bin for the total sum of $1,075.80. About $788.89 worth of material therefor has already been delivered at said place on account of said contract, and it will cost about $175.00 to complete

said contract. Said J. B. Speed & Company have advanced to M. Zier & Company the sum of $371.75, and when said contract is completed the balance of $704.05 will be due and owing this Receiver. Under these circumstances, the petitioner recommends that said work be completed, and will continue to that end unless otherwise ordered.

This petitioner reports that there are other contracts for material and labor partially completed, but which are not complicated with advancements. And as to these, petitioner is now going ahead with the work of completing the several items for the purpose of delivery and payment thereupon.

It shows to the Court that its total receipt from all sources from the date of its appointment to January 13, 1903 is $3,461.77 while its total disbursements are $1,617.95, the details of all of which are to be found on the sheet attached hereto as a part hereof marked "Receipt and Disbursements."

II.

This petitioner would further show to the Court that the following state of facts exist with respect to its trust herein, to-wit:

There are on file in the office of M. Zier & Company the following contracts with divers presons and corporations for the delivery of the things and upon the prices indicated which contracts have heretofore been made by said M. Zier & Company, but upon which neither labor nor material has been furnished or made or advancements paid, viz:

Bedford Quaines Co., Bedford, Ind.

1 36-inch boiler. . . . . $ 230.00

Pittsburg Filter Mfg. Co., Pittsburg, Pa.

2 48-inch filters. 190.00

James McWilliams & Co., Louisville, Ky.	
1 30-inch tank	32.00
5 Lengths 20-inch pipe	115.00
1 36-inch tank	44.00
1 Brine tank	145.00
Louisville Soap Co., Louisville, Ky.	
2 16-feet soap tanks	1,100.00
Bedford Steam Stone Works, Bedford, Ind.	
1 30-inch x 60 foot smoke stack	140.00
Repairing one 60-inch boiler	125.00
W. E. Caldwell Co., Louisville, Ky.	
Material for one 10-foot x 6 foot tank	65.00
E. P. Slider, New Albany, Ind.	
1 50-horsepower portable boiler	600.00
Union Cement Lime Co., Louisville, Ky.	
2 50-inch x 22-feet boilers	1,398.00
United Gas & Electric Co., New Albany, Ind.	
1 Breeching	1,750.00
Union Breeching & Finishing Co., Greenville, S.C.	
Boilers, Drum, Long Turn Bend, six extra Heavy Eatons, Valves, Heater, etc., sold through International Steam Engineering Co.	5,980.15
TOTAL FACE VALUE OF CONTRACTS	$11,914.15

From the best sources of information attainable petitioner is informed that there is a profit of about 20 per cent. under normal conditions in the fulfillment of these contracts, and that there is a profit to be made in fulfilling each of them. It would show that there are many inquiries from customers and prospective customers, and that it believes, and therefore, alleges, that if this plant is to continue in

operation it can have additional business and can keep said plant reasonably busy.

It shows that there is now on hand about $8,500.00 worth of material some of which is raw and some worked material, and that better prices can be obtained in working it all up under contracts than selling it as it now is.

III.

This petitioner would show to the court that prior to the receivership herein the said M. Zier & Company were working about 100 to 125 men; that this receiver is now working about 40 men; that the smallest number of men with which the plant can be operated at all is 25 men; that the pay roll for the week ending with January 10, 1903, was $615.00, the rent $25.00, the fuel account about $25.00, the light bill about $2.00 and water about $2.00 or for those items, a total of about $669.00; that if the operation of said plant is to continue, petitioner should be instructed to fill the contracts now on hand mentioned above in paragraph 2, and be instructed to seek other profitable and advantageous work, and to buy such material from time to time as may be necessary for it to buy. It says that it should be authorized to issue receiver's certificates for the purpose of borrowing money and paying for material, operation and other expenses, etc. when necessary. It says that the men employed by it are employed by the day only, and that it is now employing and will employ only such number as is necessary.

IV.

This petitioner would show to the court that it is in doubt as to a recommendation concerning the indefinite

operation of the said plant; that while there is possibly a good profit to be made thereby for the benefit of the estate herein, the operation thereof is fraught with danger of loss, and so it is that this petitioner recommends that a day and place be fixed for the hearing of this report and petition and that the defendant, M. Zier & Company, and its officers and the creditors of this estate be notified thereof by this receiver, by mail, and by publication, to be then and there present to be heard with respect to their recommendations or objections thereto, and that they determine what shall be done with respect thereto.

A list of the creditors as shown by the books of said M. Zier & Company is attached hereto as a part hereof marked "List of Creditors."

And finally petitioner would show that divers and various complications are threatened and will probably arise, over various claims against this estate, and against this estate, and petitioner says that same will result in great expense and vexatious delay and annoyance to this estate in the settlement thereof unless same be prosecuted in this suit, and that all creditors and other persons should be notified to prove their claims against this estate, with this receiver or in this cause and be enjoined from prosecuting any claim against this estate except by intervening petition in this cause.

WHEREFORE: The premises considered, your petitioner prays that his action herein, so far as reported, be approved and ratified; that it have the Court's instructions with respect to continuance of the operation of said plant; that a time be fixed for the hearing of this report and petition, and that the defendant, M. Zier & Company, and its officers, and the creditors of said M. Zier & Company, be notified, by mail and by publication, of the time and place of the hearing of this report and petition, at which time said creditors shall appear

and make known their recommendations or objections to the continuance of the operation of the plant herein; that all creditors be required to prove their claims against this estate by filing proof therefor with this Receiver, or by intervening petition in this cause, and that all creditors and persons be enjoined and restrained from prosecuting suits involving this estate in any manner except by intervention in this action; and it prays for all such further and other relief as the circumstances of the case may require, and as to equity belongs.

NEW ALBANY TRUST COMPANY,
By Fred Sauer, *Sec'y.*
Receiver.

STATE OF INDIANA,
County of Floyd.

Fred Sauer says he is Secretary of the New Albany Trust Company, and has the active charge of the Receivership of M. Zier & Company, and that the facts stated in the foregoing report and petition are true.

FRED SAUER.

Subscribed and sworn to by Fred Sauer before me this 16th day of January, 1903.

CHARLES B. SCOTT,
Clerk.

By William F. Ruoff,
Deputy.

AND upon the filing of the foregoing Petition and Report, at the said January Term, 1903, of the Floyd Circuit Court on the 16th day of January, 1903, before the Hon. William

C. Utz, Sole Judge among other the following proceedings were had to-wit:—

Joseph T. Ryerson & Son,
vs.
M. Zier & Company. } No. 5575.

This day came the New Albany Trust Company, Receiver of M. Zier & Company and filed an inventory and appraisement and its report and petition herein and said report and petition having been heard, it is now ordered that the same be set for the 24th day of January, 1903, at the hour of 9 o'clock a. m. at the Court Room of this Court to be further heard on the advisability of continuing the operation of the plant of M. Zier & Company and all kindred questions and the Receiver in this cause is now hereby ordered and directed to mail to the defendant M. Zier & Company and its President and Secretary and to all the persons and corporations shown in said report as creditors of said M. Zier & Company, printed notices of the fact that said petition is set for hearing on said date, place and hour, at which time all persons interested in this cause will be heard on the matters embraced in said report and petition.

It is further ordered that the receivership herein be continued and the operation of the plant herein be continued as heretofore ordered until the further order of Court, and said Receiver is ordered and directed to complete the contracts with Grainger & Company and J. B. Speed & Company under the terms and conditions proposed by said Receiver in said report and petition, no action is taken by the Court on the contracts with J. E. & F. Walters and Houston, Stanwood & Gamble Co. as set forth in said report and petition.

And this cause is reversed in all matters for such further order therein as may be deemed necessary."

AND afterwards at the said January Term, 1903 of the said Floyd Circuit Court, on the 24th day of January, 1903 the Hon. William C. Utz, Presiding, the following Report and proofs of notice was filed in open Court, to-wit:—

FLOYD CIRCUIT COURT.

"Joseph T. Ryerson & Son,
vs.
M. Zier & Company.

Comes the New Albany Trust Company Receiver herein and files its report of receipts and disbursements made since its last report herein to-wit:

1903 RECEIPTS.

Jan'y 15th.	Balance		$1,843.82
" 20th.	Todd Obenchain Co.		30.90
			$1,874.72

DISBURSEMENTS.

Jan'y 16th,	C. I. & L. Ry. Co	$ 17.75	
" "	Hoffman Ahlers & Co	34.62	
" "	Rodenbush & Payne	8.64	
" "	Globe Rolling Mill Co	231.21	
" 17th,	Scully Steel & Iron Co	243.20	
" "	United Gas & Electric Co.	27.00	
" "	Roudenbush & Payne	9.38	
" "	L. Hammersmith	32.73	
" "	J. G. Eury, Bookkeeper	526.84	
" "	" " "	17.05	
" 18th,	W. M. Mix.	15.00	
" "	S. J. Gardner	15.00	
" 20th,	B. O. & S. W. Ry. Co.	32.61	$1,211.03
			$633.69

It also files herewith as a part hereof a copy of a notice which this Receiver in pursuance of the order of Court mailed to M. Zier & Co. and to all the creditors of M. Zier & Co. the same being deposited in the United States Mail on Saturday, January 17th, 1903.

THE NEW ALBANY TRUST COMPANY,
By Fred Sauer, *Secretary.*
Receiver of M. Zier & Co.

Subscribed and sworn to by Fred Sauer this 24th day of January, 1903.

CHARLES B. SCOTT,
Clerk F. C. C

EXHIBIT.

"THE NEW ALBANY TRUST COMPANY,

New Albany, Ind., January 16, 1903.

. . . . . .

Dear Sirs:

You are hereby notified that we on this day filed in the Floyd Circuit Court our report and petition concerning the assets of M. Zier & Co. and indefinite operation of the plant. The report shows the assets are of the value of $28,434.81 and unfinished contracts of the value of about $8,000.00 and contracts on which no work has been done amounting to $11,914.15. On a hearing of the petition the Court fixed the 24th day of January, 1903, at the hour of 9 o'clock a. m. at the Court Room at New Albany, Indiana, for a further hearing of the report and petition on the question of further operation of the plant and all kindred questions at which call all creditors and all persons interested in this cause may be present and be heard.

You are therefore notified to be present in person or by attorney and then be heard.

Respectfully,
THE NEW ALBANY TRUST COMPANY,
Receiver M. Zier & Co.
By Fred Sauer, *Sec'y.*"

AND upon the filing of the foregoing report, etc., at the said January Term, 1903 of the Floyd Circuit Court on the 24th day of January, 1903, before the Hon. William C. Utz, Sole Judge among other the following proceedings were had to-wit:

Joseph T. Ryerson & Son,
vs.
M. Zier & Co.
} No. 5575.

This cause coming on to be heard on the reports and petitions of the Receiver herein, and the several matters involved therein, and it appearing to the Court that all the creditors as shown by the books of the defendant M. Zier & Company had been notified by said Receiver to be present on this day to be heard on said matters and the following creditors being present in person or by attorney to-wit:

By Jewett & Jewett, Attorneys:
Louisville Fire Brick Works.
L. Hammersmith.
F. R. Baker.
New Albany Manufacturing Co.
I. F. Force Handle Co.
Cincinnati Iron Store Co.
Queen City Supply Co.
Gertrude Strobel.
Minnie M. Zier.

Herter & Hester, Attorneys:
Jones & Laughlin Steel Co.
Crucible Steel Co. of America.
Reading Iron Co.
John Schleay, Jr., Co.
Inland Steel Co.
Burtt & Taggart, Attorneys:
E. A. Kinsey Co.
By Stotsenburg & Weathers, Attorneys:
Globe Rolling Mills Co.
New Albany National Bank.
Pittsburg & Supply Co.
Roudenbush & Payne.
By McIntyre, Bulleit & James, Attorneys:
C. U. Williams, agent Pennsylvania Railroad Co.
By C. D. Kelso, Attorney:
United States Tube Co.
Indiana Water Co.
By W. W. & J. R. Watts, Attorneys:
National Foundry and Machine Co.
Chicago Pneumatic Tool Co.
W. B. Belknap & Co.
Ahrens and Ott Mfg. Co.
Jos. T. Ryerson & Son.
A. M. Castle & Co.
Ohio Falls Varnish Co.
Portsmouth Steel Co.
John Finger and Son.
Lewis and Creed.
Louis Bir.

And the following creditors being before the Court by letters filed in this cause to-wit:

The Cincinnati Railway Supply Co.

The Dowerman Rivet and Bolt Mfg. Co.

Edward Kelly Foundry Co.

The Cleveland Steel Company.

And said creditors having entered their appearance and having been heard with respect to the matters herein, it is now ordered and without objection thereto, that the Receiver herein shall pay in full the rent due on the premises on plant of said M. Zier & Co. to the Chicago, Indianapolis & Louisville Railway Co. the lessor of said premises.

The Receiver herein having reported that John E. & Frank Walters have agreed to pay into Court and into the hands of the Clerk of this Court the sum of $900.00 in full of the completion of the contract herein between said Walters and M. Zier & Co. said sum to be retained by said Clerk until such completion and the further order of Court the Receiver herein to deliver by January 28, 1903 the boilers and material to be furnished under said contract and to complete the work under said contract and according to the specifications thereof, within ten days from the date of completion of the brick work, which said Walters are to do to make said work ready for completion by said Receiver, said Walters agreeing that they will not delay the erection of the said brick work to be done for the erection of said boilers. Upon the entry of an order of Court directing said receiver to carry out such agreement, said Walters are to pay said money into Court as aforesaid and shall dismiss certain attachment proceedings they have instituted in Kentucky and cancel and surrender any claim they may have for damages on account of said contract, which may have accrued to this time. It is now ordered and without objection thereto that said agreement be and the same is hereby approved and said receiver is now ordered and directed to carry out the same upon the terms thereof.

It is further ordered by the Court after hearing said creditors in person and by attorney, and it appearing to be the unanimous wish of those present that the Receiver herein shall continue the operation of the plant herein until the further order of the Court and shall proceed to the completion of the unfinished contracts now on hand and the contracts amounting to $11,914.15 as set forth in the receiver's report and petition herein upon which no work or material has been done or furnished and shall accept and do such repair work or small jobs as it may be offered and as it may do, but not to make any new contract or take any other work, which will prolong the operation of said plant beyond the time of two months from this date except upon the further order of this Court. Said receiver is authorized to buy material borrow money or contract other indebtedness necessary for such operation to the extent of but not to exceed the sum of $5,000.00 and is authorized to issue certificates of any such indebtedness and said certificates shall bear interest at the rate of six per cent. per annum from their date until paid and they shall be and remain a first and superior lien upon all the assets in this estate to secure their payment and said receiver shall pay off said certificates from time to time when the funds in hand justify the same. Said receiver shall operate said business on as small expense as may be done and shall retain in the office of said plant one clerk only, at an expense of $4.00 per week unless otherwise ordered by the Court.

It is further ordered that all persons or corporations shown on the books of said M. Zier & Co. as creditors and all others who may be known to said receiver as creditors thereof, shall be notified immediately by said Receiver by mail to file their claims against this estate properly proved according to law, same to be filed with said receiver on or

before the 11th day of May, 1903, and said receiver shall further notify all creditors by publication by three insertions in one or more daily papers published in the City of New Albany, Indiana, to prove and file such claims within said time. And it is now ordered that all creditors and other persons be and they are hereby enjoined and restrained from prosecuting any claim or suit against this estate except by intervention in this cause or by first obtaining leave of this Court.

And this cause is now reserved on all matters for the entry of such orders as may appear to be necessary."

AND afterwards, at said January Term, 1903, of said Floyd Circuit Court on the 14th day of February, 1903, the Hon. William C. Utz, Presiding, the following petition and report was filed in open Court, to-wit:

"FLOYD CIRCUIT COURT.

Joseph T. Ryerson & Son,
Complainant.
vs.
M. Zier & Co.,
Defendant.

PETITION OF NEW ALBANY TRUST CO. CONCERNING PROCEEDINGS IN BANKRUPTCY.

Respectfully represents the New Albany Trust Company, receiver of M. Zier & Co. under order of appointment herein that since its last report herein the following is the status concerning the matters pertaining to this estate, to-wit:

That pursuant to the order of Court herein entered on the 24th day of January, 1903, it has entered upon the ful-

fillment of the contract or agreement between this receiver and John E. and Frank Walters therein set forth, as also with the uncompleted and the new contracts therein ordered and directed to be completed and fulfilled; that while some of the same have been completed, others there are, and particularly said Walters contract, which are in a state of incompletion and upon which this Receiver is now working; that it has in all respects obeyed and is carrying out the provisions of said order. Said order is now referred to as a part hereof in all respects as fully as if copied herein in haec verba.

Petitioner would show to the Court that said order so made part hereof was entered by this Court only after the most careful consideration by this Court, your petitioner and the creditors of said M. Zier & Co. that this petitioner being in some doubt as to what should do or recommend with respect to said estate did on the 16th day of January, 1903 file in this Court, in open Court its report and petition showing among other things the appraisement details and character of the assets of said M. Zier & Co. coming to its hands, and that therein it recommended among other things, that said report and petition be set for a particular day for hearing thereon; that in the meantime said M. Zier & Co. and its officers, and all the creditors of said M. Zier & Co. as shown by the list of creditors then filed, and which list included the Inland Steel Co., John C. Thruston and Dey Time Register Co., be given notice thereof by the United States Mail, so that any and all creditors or persons interested therein should be present and be heard, and make known their recommendations or objections with respect thereto. Said petition and said list are now referred to as part hereof as fully as if copied herein; that on said 24th day of January this petitioner filed its report herein among

other things showing the facts with respect to such notice, filing a copy thereof, and that it had sent such notice by mail deposited in the United States Mails on the 17th day of January, 1903, and such notice was mailed by this Receiver on said day to all the creditors so shown in said list, including said Inland Steel Co., John C. Thurston and Dey Time Register Co. aforesaid.

On the said 24th day of January, 1903 said cause was called by this Court on said report and petition, and there then appeared divers of said creditors in person or by attorney, at said hearing; that said report and said petition was then before said creditors in open Court discussed, under and by which discussion settlement and disposition was made of the divers matters under discussion and set forth in said report and petition and kindred matters therein and there and then appeared the Inland Steel Company and Jacon Herter and George H. Hester as its attorneys, and said Inland Steel Company and said Herter and Hester as such attorneys, entered their appearance as is disclosed by said order dated January 24, 1903 herein, and said attorneys and, especially said Hester as such attorney participated in said proceedings, that said Hester was also attorney for said Walters with respect to the contract between said Walters and said Zier & Co. and this Receiver, and was so present insisting upon its fulfillment and agreeing to its carrying out as provided in said order; that at said hearing, said order of said January 24, 1903 was entered without objection from said Inland Steel Company, John C. Thruston and Dey Time Register Co., or any creditor present in person or by attorney or any creditor notified as aforesaid, or any creditor or person; that at no time has there been objection by any one to the Receivership herein, nor motion of any nature to set aside this Receiver's appointment.

Your petitioner would now show to the Court that among other things said order provided that all creditors and other persons be and they were then and thereby enjoined and restrained from prosecuting any claim or suit against the estate herein except by intervention in this cause, or by first obtaining leave of this Court and thereupon said cause was retained as to all matters for the entry of such orders as may appear to be necessary, and said order appointing this Receiver has never revoked or set aside and same is now in full, force and effect.

The petitioner would now show to the Court that without respect to what has been done herein as herein set forth said Inland Steel Co., John C. Thruston and Dey Time Register Co., have since the entry of said order on January 24th, 1903 as petitioner is informed, believes and alleges, filed a petition in involuntary bankruptcy against said M. Zier & Co. as alleged by them on grounds of bankruptcy as provided by the Act of Congress entitled "An Act to Establish a Uniform System of Bankruptcy Throughout the United States" approved July 1, 1898; that said petition was filed in the District Court of the United States for the District of Indiana, at New Albany, Indiana on the 6th day of February, 1903, that thereafter, to-wit: On February 11, 1903 a supplemental petition was filed, based on said Act of Congress, as amended; that on said February 11, 1903, said petitioner, Inland Steel filed in said Court a petition verified by said Hester in which they set forth the receivership herein, and without showing to that Court all the facts herein, set forth, to-wit: Their notification as to the hearing of said report and petition, the participation of said Inland Steel Company and said Herter and Hester as attorneys in this proceeding, their appearance herein, the consideration of said receivership by said credit-

ors, and the restraining order and injunction herein an order was then obtained therein whereby one Frederick D. Conner was by that Court appointed receiver and directed to take charge of the estate of M. Zier & Co. in bankruptcy and therein this receiver was ordered to deliver up to said Frederick D. Conner as such receiver, the said property and effects of said M. Zier & Co. now in its possession and to refrain from interfering in any way with said Conner's possession as receiver.

Petitioner is further informed, believes and alleges that said Hester as such attorney and said petitioning creditors, said Frederick D. Conner and Henry U. Pettit, the Marshal of said District Court of the United States for the District of Indiana, are now seeking and will seek to disturb this Court's Receiver in its possession and without the order of this Court, and irrespective of the matters herein set forth and endeavoring and will endeavor to take possession thereof and from this receiver.

Petitioner would show that the creditors whose appearance are noted before this Court in the entry of the order herein on January 24, 1903, have claims aggregating about $53,279.51 against the estate herein; that certain creditors whose claims aggregate $11,622.49 have filed their claims with this receiver, thus making a total of $64,902. in amount so filed or appearing; that the total liability of the estate of $76,463.36; that the total number of creditors is 76; that 37 appeared to this action, as appeared by said order and 25 including said Dey Time Register Co. have filed their claims with this receiver for the purpose of participating in this estate making a total of 62 creditors so appearing or filing their claims with this receiver.

Petitioner says that with a view to the observance of that comity existing between the State and the Federal

Courts as defined by the Supreme Court of the United States and the several Federal and State Courts, and with a view to avoiding the clash of jurisdiction herein necessarily to be brought about on the enforcement of said Court's order, this petitioner caused its attorneys to hold conversation over the long distance telephone between New Albany and Indianapolis, Indiana, with the Honorable A. B. Anderson, Judge of said District Court of the United States for the District of Indiana on this 13th day of February 1903, and therein caused said counsel to urge that because thereof said order appointing such receiver should not be enforced until after said matters sould be presented to this Court with the request that this Court direct it and its said attorneys to lay said matters before said, the Honorable A. B. Anderson, Judge of said Court, as this Court might direct, whereupon said Judge requested petitioner's counsel to notify said Hester as such attorney, that said matter might be heard on Monday February 16, 1903 at Indianapolis, Indiana, and that in the meantime the said order appointing said Connor such receiver was not to be enforced; that thereupon petitioners counsel so notified said Hester as such counsel by service of a written notice thereof, a copy of which is filed herewith as part hereof marked "Notice."

Petitioner would further show to the Court that this Court is about to adjourn over to its next term and that the first day thereof will be the 9th day of March 1903; that the order herein above referred to entered on January 24, 1903, directed this receiver to go on with and complete various contracts at that time submitted and discussed; that it has entered upon said work; that the operation of this plant was for the beneficial purpose of this estate; that while it involves much outlay to continue its operation, it has reduced all expenses to the minimum; that the cessation of said

plant means much loss to the creditors of this estate in that it will dispel the organized force of skilled workmen now employed by petitioner; that it will involve this estate in many complicated questions of loss or damage with respect to the fulfillment of the contract which it has so undertaken to fulfill. That it would work great hardship on this receiver and upon this estate to leave it with this Court adjourned and without order and instructions as to what to do; that this Court should so instruct it and order it as to the matter herein and especially for the time between the time of its adjournment and its convention again that this receiver is advised, it is an officer of this Court only, and that it must be ordered and directed by this Court only with respect to the property in its hands.

And so it is that this petitioner would now show that it is advised, believes and alleges:

1. That the injunction and restraining order of this Court herein has been knowingly violated by said Inland Steel Co. and said Dey Time Register Co., and Herter and Hester, attorneys for said Inland Steel Company.

2. That said Inland Steel Company and said Dey Time Register Company and all other creditors are estopped from prosecuting said petition in bankruptcy, and especially said petition seeking to take from this receiver the assets in its hands.

3. That all creditors and others are enjoined and restrained from prosecuting any attempt to take from this receiver any of the assets in its hands as receiver except by leave of this Court on intervention herein.

4. That the record in said District Court of the United States for the District of Indiana does not disclose all the facts of the matters herein; that said Court was not informed as to the injunction restraining order and estoppels by

entries of appearance, participation and otherwise herein occurring and in this petition set forth.

5. That the assets of M. Zier & Co. in the possession of this receiver are in custodia legis; that the parties have submitted to this form; that this Court came into lawful custody thereof, and said several orders and proceedings were entered and had before the institution of said bankruptcy proceedings and attempt to oust this Court and this Receiver therefrom; that because of the respect between the Courts, both State and Federal, for the orders and decisions of each other in said matters and because of the spirit of comity existing between said Courts as fixed and defined by the Supreme Court of the United States, the several Federal and State Courts, had said District Court been advised of the matters herein set forth, said Court would not have entered said order as set forth, or would have so modified said order as to direct said Connor to come to this Court by intervening petition and plead his causes here.

6. That this petitioner believes and therefore; alleges and charges that said District Court under the peculiar circumstances of this case will co-incide with this Court, if it shall deem it wise to enter orders herein specificaly enjoining and restraining the said Inland Steel Company, John C. Thruston, Dey Time Register Company and Herter and Hester, attorneys, said Frederick D. Connor, individually and as Receiver and Henry U. Pettit the Marshal of the District Court of the United States for the District of Indiana, from further prosecuting any matters in relation to this estate with respect to the matters herein alleged or the taking of said assets in any manner except by intervention in this action.

The premises considered this petitioner recommends and prays that it be instructed, directed and ordered what

it shall do with respect to the estate in its hands now pending the controversy and adjournment of Court herein; that it shall present the facts in this matter to the said District Court of the United States for the District of Indiana, either by limited or general appearance in said suit instituted by said Inland Steel Company, et al. in bankruptcy; and ask such relief, if any, as this Court may direct; that said Inland Steel Company, John C. Thruston and Dey Time Register Company, said Frederick D. Connor, Receiver and individually and said Henry U. Pettit, Marshal of the District Court of the United States for the District of Indiana be enjoined and restrained from in any suit, summary process or otherwise, or in any manner attempting to or ousting or taking from this Receiver the possession of said estate except by intervention herein and proper orders entered in this cause; that this receiver be directed to continue the operation of said plant as heretofore ordered and to report to this Court any molestation of whatever nature it shall suffer in such operation in violation of such orders.

It prays for such other and further relief as the circumstances of the case may require and as to equity belongs.

W. W. & J. R. WATTS,
Attorneys for Petitioner

Fred Sauer, says he is the Secretary of the New Albany Trust Company, receiver petitioner in the foregoing petition, having in charge the active management of the Trust herein mentioned, and that the statements in the foregoing petition are true.

FRED SAUER.

Subscribed and sworn to by Fred Sauer before me this 14th day of February 1903.

CHARLES B. SCOTT,
Clerk F. C. C."

AND upon the filing of the foregoing petition at the said January Term 1903 of the Floyd Circuit Court, on the 14th day of February 1903, before the Hon. William C. Utz, Sole Judge among other the following proceedings were had to-wit:

Joseph T. Ryerson & Son,
vs.
M. Zier & Co.
} No. 5575.

Comes the New Albany Trust Company, receiver herein and files its petition herein showing to the Court divers matters concerning the filing of a petition in the District Court of the United States for the District of Indiana; by the Inland Steel Company, John C. Thruston and Dey Time Register Company, as creditors of said M. Zier & Co., in involuntary bankruptcy and a petition seeking the appointment of a receiver therein to take charge of the assets in this Court's possession through its receiver herein, whereupon such an order was entered, Frederick D. Connor being named as receiver and being directed to take possession of such assets, and further showing to the Court that the record in said case disclosed the fact that said Court was not fully advised as to the various orders, injunctions, restraining orders, and estoppels by entries of appearance and participation in these proceedings by divers creditors of this estate, including said Inland Steel Company and Dey Time Register Company, petitioning creditors therein, and further showing that because of the immediate adjournment of this Court and its convention not being again had until March 9th 1903, and the operation of the plant herein made by and with the advice of much more than a majority in number and amount of the creditors herein, including said Inland Steel Company, such petitioning creditor in bankruptcy

and this Court now after havig read said petition and having considered the various exhibits referred to in such receiver's petition and the entire record of this cause and being fully advised is of the opinion that had said District Court of the United States for the District of Indiana been fully advised of the divers matters herein occurring it would not have entered such order as has been therein entered; that because of the comity existing between the Courts of this Country, State and Federal, its order would at most have directed any attempt to take the assets herein to be by intervention in this cause and that only, and being of the opinion that said District Court will coincide with these views and a state of necessity for the entry of this order existing, It is now ordered that the Receiver herein conduct the operation of the plant herein as heretofore ordered and directed; that said Inland Steel Company, John C. Thruston and Dey Time Register Company, Frederick D. Connor individually and as receiver and Henry C. Pettit individually and as Marshal of the District Court of the United States for the District of Indiana and all others in any capacity be and are hereby enjoined from in any wise molesting, interfering with or attempting by legal process or otherwise to take possession of the estate of M. Zier & Co. in the hands of this Court through its receiver herein, and in the hands of said receiver until the further order of this Court, and except by intervention in this cause.

And said Receiver is now hereby ordered and directed through its attorney, to proceed to Indianapolis, Indiana, and there by a limited appearance and by protestation against appearance, only, by petition upon such appearance only, lay before said District Court of the United States for the District of Indiana the facts with regard to the matters herein, said injunction, restraining order, and said estoppels and to

suggest to said Court the orders of this Court and the fact that had it been fully informed, as is believed by this Court, its order with respect to the assets herein would at the most have been a direction to make an application to this Court at the proper time and in the proper way for delivery of the said assets to such District Court's receiver or trustee after proper disposition and settlement of the matters herein.

The Court being further advised and on motion of said New Albany Trust Company, receiver, It is ordered that the Inland Steel Company, John C. Thruston and The Dey Time Register Company, be and they are hereby ordered to appear and show cause why they have prosecuted said petition in involuntary bankruptcy why they have filed said petition seeking the appointment of a receiver for the assets of this estate, why they have sought to take from this Court the assets of this estate, why they should not be punished for contempt for disobeying the orders of this Court without first obtaining leave of the Court by petition of intervention or order in this cause. And they are hereby commanded to show such cause on or at the time of the first day of the next term of this Court. And service of a copy of this order upon Jacob Herter and George H. Hester because of their apparent representation of said petitioning creditors and then said co-counsel for the purpose of this show cause order shall be deemed sufficient for the service thereof on all said persons and parties.

And It is further ordered that this Court shall retain such control of said matters as may be necessary for the purpose of the entry of any and all such orders as may be deemed proper and necessary herein and therein. And Jacob Herter and George H. Hester such attorneys now being present in Court and Hester having been heard in opposition to the said petition and having notice of the

entry of this order It is now ordered that no other or further notice hereof need be given the said Inland Steel Company, John C. Thruston and Dey Time Register Co., petitioners in said bankruptcy proceedings. And comes now C. D. Kelso and asks leave of the Court to withdraw as the attorney of record for the following named parties; United Gas and Electric Company, United States Tube Company, Indiana Water Company and Simon David and the Court now permits the said C. D. Kelso to withdraw herefrom."

And afterwards at the said January Term, 1903 of said Floyd Circuit Court on the said 14th day of February 1903 before the Hon. William C. Utz, Sole Judge among other the following proceeding were had to-wit:

"Joseph T. Ryerson & Son,
vs.
M. Zier & Co. } No. 5575.

Comes now Frederick D. Connor as receiver by George H. Hester his attorney, and by leave and order of the Court and upon his own motion, makes himself a party to this proceeding, and thereupon by leave of the Court files his verified petition showing his appointment as receiver of said M. Zier & Co. by order of the United States District Court for the District of Indiana and praying this Court for an order requiring the said New Albany Trust Company, as receiver of said M. Zier & Co. to turn over and surrender to him said Frederick A. Connor, as receiver in bankruptcy, the property of said M. Zier & Co. of which the said New Albany Trust Company as receiver of said M. Zier & Co. under the orders of this Court is custodian and the matter of said petition is now continued until the next term of this Court.

And afterwards at Chambers, In Vacation, of the Floyd Circuit Court on the 16th day of February, 1903, before the Hon. William C. Utz, Sole Judge among other the following proceedings were had to-wit:

Joseph T. Ryerson & Son,
vs. } No. 5575.
M. Zier & Co.

Comes now W. W. Watts, attorney for the New Albany Trust Company as receiver of M. Zier & Co. and files before the Judge of the Floyd Circuit Court a written statement which reads in words and figures as follows, to-wit:

"FLOYD CIRCUIT COURT.

State of Indiana, } ss.
Floyd County. }

Joseph T. Ryerson & Son,
Complainant.
vs.
M. Zier & Co.,
Defendant.

Statement and Motion by New Albany Trust Co., Receiver, and W. W. Watts, its Attorney.

To the Honorable Judge of the Floyd Circuit Court in Chambers:

Respectfully represents the New Albany Trust Co., receiver herein, and W. W. Watts, one of its attorneys herein, that pursuant to the order of the Court herein entered on Saturday, February 14, 1903, they on the 16th day of February, 1903, at Indianapolis, Ind. filed before the District Court of the United States for the District of Indiana, A. B. Anderson, Judge presiding, a statement of the New Albany Trust Co., receiver under the order of this Court setting forth the facts by protestiation and limited appearance only and showing to said Court the reasons for a modi-

fication of its order theretofore entered appointing a receiver granting an injunction and restraining order and directing its receiver to take possession of the assets of M. Zier & Co.

This receiver and said attorney say they have made diligent effort to carry out the orders of this Court with respect to those matters, but the order of said Court remains as it was and they now move the Court to strike and expunge from the files herein the petition of this receiver filed herein on the 14th day of February, 1903 and the order entered thereon.

NEW ALBANY TRUST CO.,
Receiver.
By W. W. Watts, *Attorney.*"

And the Judge after considering said statement refuses to concur therein, but orders that the matters and facts therein stated show that said W. W. Watts has been guilty of a contempt of Court and it is now ordered that rule be issued against the said W. W. Watts, to appear before the said Judge on the 21st day of February, 1903 at 3 o'clock p. m. and show cause, if any he has, why he should not be punished for contempt.

Dated Feby. 19th, 1903. WILLIAM C. UTZ,
Judge."

AND afterwards, at Chambers, in Vacation of the Floyd Circuit Court on the 19th day of February, before the Hon. William C. Utz, Sole Judge, among other the following proceedings were had, to-wit:

Joseph T. Ryerson & Son,
vs.
M. Zier & Co. } No. 5575.

Comes now the New Albany Trust Company as receiver of M. Zier & Co. and tenders to the Judge of the Floyd Cir-

cuit Court, its written resignation as such receiver, which written resignation reads in words and figures as follows, viz:

"STATE OF INDIANA,)
County of Floyd.) ss.

Joseph T. Ryerson & Son,)
vs.)
M. Zier and Company)

To the Honorable, Judge of the Floyd Circuit Court, In Chambers:

The New Albany Trust Company, receiver in the above entitled cause respectfully shows to the Court that in pursuance of the order heretofore made by this Court it appeared by limited appearance and protestation only as ordered by this Court before Judge A. B. Anderson, of Indianapolis, Judge of the United States District Court for the District of Indiana, on Monday the 16th day of February, 1903, and that upon the hearing in that Court this Receiver stated to the Honorable Judge of said United States District Court that it was ready and willing to turn over to the receiver appointed by the Honorable Federal Court in bankruptcy proceedings, of M. Zier and Company, then pending in said Court the property and assets of said M. Zier and Company in the hands of this receiver, and this Receiver further states that it has not yet been able to make up its accounts as receiver as to the receipts and disbursements, but that it is now preparing the same to be submitted to this Court; but that it is ready to turn over to Frederick D. Connor, the receiver appointed by the United States District Court in baakruptcy all of the property of the said M. Zier & Company; and this receiver now prays for an order of this Court authorizing it to turn over to said Frederick D. Connor,

the property of said M. Zier and Company, now in its hands together with any balance in cash which may remain after such statement of its accounts shall be made up and presented and that upon delivering said property to said Frederick D. Connor, receiver aforesaid, it be discharged from all further liability for or on account of said property or assets of said M. Zier and Company so turned over to such Connor as such receiver.

This receiver further asks that upon making up and presentation of its accounts for allowance to this Court, that it be allowed to resign as Receiver of the said M. Zier & Company, and that upon the approval of its accounts its said resignation be accepted by this Company, and that it be fully and finally discharged as such receiver. All of which is respectfully submitted.

THE NEW ALBANY TRUST COMPANY,
By Henry E. Jewett,
Vice-President.

Henry E. Jewett being sworn on his oath, says: He is the Vice-President of the New Albany Trust Company and makes this affidavit on behalf of said Company; that the statements contained in the foregoing petition are true in substance and fact as he verily believes.

HENRY E. JEWETT.

Subscribed and sworn to before me this 19th day of February 1903. CHARLES B. SCOTT, *Clerk*,
By William F. Ruoff, *Deputy*."

And the Judge after reading said tender of resignation holds that the matters therein set forth show that said Receiver is in contempt of Court, and the Judge orders that a rule issue at once against said Receiver to appear before the undersigned Judge on the 21st day of February 1903 at

3 o'clock p. m. and show cause, if any it has or can, why it should not be punished for contempt of Court.

WILLIAM C. UTZ,

Dated Feby. 19, 1903. *Judge.*"

AND afterwards in Vacation, at Chambers of the Floyd Circuit Court on the 20th day of February 1903, before the Hon. William C. Utz, Sole Judge among other the following proceedings were had to-wit:

IN VACATION.

"Joseph T. Ryerson & Son,
vs. } No. 5575
M. Zier & Co.

Comes now the plaintiff by W. W. Watts, its attorney, and comes also the New Albany Trust Company, as Receiver in the above entitled cause; comes also the United States Tube Company, by D. A. Saches, its attorney, and files before the Judge of this Court its verified statement, which reads in words and figures as follows to-wit:

"STATE OF INDIANA }
County of Floyd. } *ss.*

Before Honorable William C. Utz, Judge thereof in Vacation:

Joseph T. Ryerson & Son,
vs.
M. Zier & Co.

IN THE MATTER OF THE RECEIVERSHIP OF SAID DEFENDANT M. ZIER & CO., NEW ALBANY TRUST COMPANY, RECEIVER.

Comes now the United States Tube Company by D. A. Sachs, its attorney, and respectfully represents to the Court,

that on the 19th day of February 1903, the said New Albany Trust Company as such Receiver of said M. Zier & Co. did wrongfully, unlawfully and without leave of this Court turn over and surrender the possession of the M. Zier & Co.'s boiler plant located at the Northeast corner of Upper First or Pearl and Oak streets in the city of New Albany, Indiana to one Frederick D. Connor, who is acting as receiver in bankruptcy claiming to have been appointed by the District Court of Indiana, sitting in bankruptcy, and that said New Albany Trust Company, as such receiver of said M. Zier & Co. is now threatening to and will, unless restrained by order of this Court turn over to said Frederick D. Connor as such receiver in bankruptcy, all the other assets of said M. Zier & Co. remaining in its hands as such Receiver.

Wherefore your petitioner prays that the said New Albany Trust Company, as such receiver, be cited to appear before your Honor in Chambers, at 3 o'clock p. m. of this the 20th day of February 1903 and show cause, if it any have or can, why it should not be punished for contempt of Court, and the undersigned further prays that if this Court finds that said receiver has violated the orders of this Court as above represented, that it be removed from its office as such receiver, and a successor immediately appointed, and that said receiver be required to file its account immediately and to turn over to its successor all of the property it now has in its hands as such receiver belonging to said M. Zier & Co. and your petitioner further prays for such other orders as the Court may deem right and proper in the premises.

Respectfully submitted,

UNITED STATES TUBE COMPANY,

By D. A. Sachs,

Its Attorney.

D. A. Sachs, being first duly sworn upon his oath, says that the matters and facts as set forth in the above and foregoing petition are true as he verily believes so help him God.

D. A. SACHS.

Subscribed and Sworn to before me this 20th day of February 1903.

BERTHA L. SCOTT,

[SEAL.] *Notary Public.*

My commission expires January 12th, 1905."

And the application of said receiver to be permitted to resign as such is now disallowed by the Judge of this Court for the reason that said receiver in its said written tender of resignation openly and wilfully shows to the Court that it has violated the trust reposed in it by the Judge of this Court, and has wrongfully, unlawfully and without leave or permission of the Judge of this Court or said Court, surrendered the possession of the property of which it is custodian to Frederick D. Connor, and now the Judge of this Court, upon his own motion and because of the open contempt of said receiver for the orders, judgment and process of this Court does now order and direct, that said receiver be and it is hereby removed from its trust. And it is now ordered to immediately account to the Court for all of the assets of said M. Zier & Co. which came into its hands as such receiver, and now the Judge of said Floyd Circuit Court, upon his own motion appoints Charles D. Kelso as receiver of said M. Zier & Co. as successor to New Albany Trust Company; And the Judge of this Court now orders and directs that said Charles D. Kelso immediately qualify as such receiver and that he give bond in the sum of Thirty Thousand Dollars ($30,000.00) to the approval of the Judge of

the Floyd Circuit Court and that said receiver is now ordered by the Judge of this Court to immediately upon his qualification, demand of said New Albany Trust Company and of said Frederick D. Connor the immediate possession of the property of said M. Zier & Co. which came into the hands of said New Albany Trust Company as the receiver herein and if the said New Albany Trust Company or said Frederick D. Connor shall fail and refuse to immediately turn over and surrender the possession of said assets to said receiver, the Judge of this Court now orders and directs that said receiver immediatelly report such refusal and failure to surrender such assets to this Honorable Judge for further action in the premises.

And now comes Charles D. Kelso and files with the Clerk of this Court his bond in the sum of Thirty Thousand (30,000.00) Dollars condlitioned according to law with the United States Fidelity and Guaranty Company of Baltimore, Maryland as surety thereon, which bond is now approved by the Judge of this Court and the said receiver thereupon takes his oath of office. And the Judge of this Court now orders and directs that said receiver proceed to execute the duties of his trust in the same manner and being invested with the same powers as the New Albany Trust Company was heretofore invested, the present receiver being authorized to carry out all the orders of the Court heretofore made in this cause.

WILLIAM C. UTZ,

Dated at New Albany, Ind. *Judge.*
February 20th, 1903.

AND afterwards at Chambers, in Vacation of the Floyd Circuit Court on the 20th day of February 1903 before the

Hon. William C. Utz, Sole Judge among other the following proceedings were had to-wit:

Joseph T. Ryerson & Son,
vs.
M. Zier & Co.

IN THE MATTER OF THE RECEIVERSHIP OF SAID DEFENDANT M. ZIER & CO., CHARLES D. KELSO, RECEIVER.

Comes now Charles D. Kelso, receiver of M. Zier & Co. and files before the Judge of the Floyd Circuit Court of Indiana in Chambers and in Vacation his verified report which reads in words and figures as follows to-wit:

Before the Honorable William C. Utz, Judge of Floyd Circuit Court:

"STATE OF INDIANA,
County of Floyd. } ss.

Joseph T. Ryerson & Son,
vs.
M. Zier & Co.

IN THE MATTER OF THE RECEIVERSHIP OF M. ZIER & CO., CHARLES D. KELSO, RECEIVER.

Comes now Charles D. Kelso, as receiver of M. Zier & Co. and respectfully shows to the Judge of this Court, that in obedience to the orders of this Honorable Judge he called upon the New Albany Trust Company and demanded of it the possession of all the assets of said M. Zier & Co., which came into its hands as receiver thereof, and that said Trust Company failed and refused to surrender the possession thereof for the reason that it had turned over the plant of

M. Zier & Co. located on Pearl and Oak Streets in the City of New Albany, Indiana, to Frederick D. Connor and that for the other assets of said Company it intended to account forthwith to the Honorable Judge of this Court. Thereupon the undersigned as receiver of said M. Zier & Co. called upon said Frederick D. Connor and demanded of him the possession of all the property of said M. Zier & Co. which had been wrongfully turned over to him by said New Albany Trust Company and that said Frederick D. Connor failed and refused to turn the same over to the undersigned.

Wherefore the undersigned prays for such other orders and decrees in the premises as the Judge In Vacation may deem just and proper.

Respectfully submitted,

CHARLES D. KELSO,

Receiver of M. Zier & Co.

Subscribed and sworn to before me this 20th day of February 1903.

CHARLES B. SCOTT, *Clerk, F. C. C.*

By William F. Ruoff, *Deputy.*"

And the Court having considered said report and being fully advised in the premises, finds that Frederick D. Connor has and is intermeddling with the assets of said estate and is interfering with the possession and control of said assets by the receiver of this court.

It is therefore considered, ordered and adjudged by the Judge of said Court, that a summary writ be issued in this cause directed to the Sheriff of this County, requiring the said Sheriff to immediately seize and to take into his possession and deliver over to Charles D. Kelso, receiver of M. Zier & Co. all the property of said M. Zier & Co., which said Frederick D. Connor now has in his possession, which con-

sists of the plant of M. Zier & Co. located at the corner of Pearl and Oak Streets in the City of New Albany, Indiana, including all tools and machinery, manufactured iron, scrap iron, appliances and other personal property therein situated, books, papers, accounts and choses in action, and that said Sheriff of said County execute said writ forthwith and upon the execution of said writ make his return to the Judge of the Honorable Floyd Circuit Court forthwith.

Dated at New Albany, Ind., February 20, 1903.

WILLIAM C. UTZ,
Judge."

STATE OF INDIANA, }
County of Floyd. } *ss.*

I, Charles B. Scott, Clerk of the Floyd Circuit Court within and for said County and State do hereby certify that the within and foregoing is a full, true and complete Copy of Entries of Record and Orders of Court together with the papers and pleadings set out and filed therein, in the receivership case of Joseph T. Ryerson and Son *versus* M. Zier & Company, as the same appears of record and on file in my office.

WITNESS my hand and the seal of said Court hereto affixed at New Albany, Indiana this 4th day of March, 1903.

CHARLES B. SCOTT,
Clerk Floyd Circuit Court.

[SEAL.]

STATE OF INDIANA, }
Floyd County. } *Set.*

I, William C. Utz, Judge of the Floyd Circuit Court, in and for said County and State, do hereby certify that

Charles B. Scott, is the Clerk, and Keeper of the Seal thereof, that his attestation to the foregoing certificate is in due form of Law and that his genuine signature is thereto affixed.

WITNESS MY HAND and the seal of said Court hereto affixed this 4th day of March, 1903.

WILLIAM C. UTZ,
[SEAL.] *Judge Floyd Circuit Court.*

STATE OF INDIANA, } *Sct.:*
Floyd County. }

I, Charles B. Scott, Clerk of the Floyd Circuit Court, in and for said County and State, do hereby certify that William C. Utz is the Judge of said Floyd Circuit Court, that his attestation to the foregoing Certificate is in due form of Law and that his genuine signature is thereto affixed.

WITNESS MY HAND and the seal of said Court hereto affixed this 4th day of March, 1903.

CHARLES B. SCOTT,
[SEAL.] *Clerk Floyd Circuit Court.*

Exhibit B.

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF INDIANA.

In Bankruptcy. February 6, 1903.

In the matter of M. Zier & Company, Alleged Bankrupt. } No. 37. In Bankruptcy.

Come now the Inland Steel Company and other, by Ringer, Wilhartz & Louer, their solicitors, and file a petition to have M. Zier & Company adjudged a bankrupt. And said petition is in the words following, to-wit:

The petition of Inland Steel Company, a corporation, John C. Thurston and John Dey, doing business as Dey Time Register Company, respectfully represent that M. Zier & Company, a corporation, has for the greater portion of six months next preceding the date of the filing of this petition, had its principal place of business at New Albany in the State of Indiana in the County of Floyd and State and District aforesaid, and owes debts to the amount of over seventy-five thousand dollars; that your petitioners are creditors of M. Zier & Company, and have provable claims amounting in the aggregate, in excess of the securities held by them, to over Five Hundred Dollars; that the nature and amount of your petitioners' claims are as follows:

Said Inland Steel Company, a corporation, is a creditor of M. Zier & Company, a corporation, in the sum of Nine Hundred and Thirty-five Dollars, evidenced by the notes of said M. Zier & Company, payable January 20th, 1903, given for goods, wares and merchandise sold and delivered.

Said John C. Thurston is a creditor of said M. Zier & Company in the sum of Fifteen Dollars for goods, wares and merchandise sold and delivered.

Said John Dey, doing business as Dey Time Register Company, is a creditor of M. Zier & Company in the sum of One Hundred Dollars, evidenced by the note by the note of said M. Zier & Company, given for goods, wares and merchandise, sold and delivered.

Your petitioners further represent that M. Zier & Company is insolvent; that within four months next preceding the date of the filing of this petition in bankruptcy, the said M. Zier & Company committed acts of bankruptcy as follows:

First. Your petitioners allege upon information and belief that said M. Zier & Company did heretofore, to-wit: on divers dates within four months last past, while insolvent, transfer to the firm of Joseph T. Ryerson & Son of Chicago, and to Minnie M. Zier of Minneapolis, Minnesota, creditors of said M. Zier & Company, certain portions of the property of the said M. Zier & Company, with intent to prefer said creditors over and above the other creditors of said M. Zier & Company, the aggregate value of said property amounting at least to the sum of Five Hundred Dollars.

Second. That the said M. Zier & Company did on divers dates, within four months last past, while insolvent, transfer divers other portions of its said property to divers other persons who were then and there creditors af said M. Zier & Company, and especially to Minnie M. Zier, with intent to prefer such persons over and above the other creditors of M. Zier & Company.

Your petitioners further represent that said M. Zier & Company is engaged in the business of manufacturing boilers and kindred articles in the city of New Albany, Indiana, and has on hand a large stock of merchandise,

machinery and tools, and a large number of outstanding accounts; that under certain proceedings in a State Court a receiver has been appointed of the assets of said corporation, M. Zier & Company and is attempting to collect the assets of said estate, and incurring petty expenses in and about said estate, which must be borne by the creditors thereof; and your petitioners aver that it is absolutely necessary for the preservation of said estate of said M. Zier & Company, for the benefit of all of its creditors, that a Receiver in bankruptcy be appointed herein forthwith; that the total value of said assets of said M. Zier & Company does not exceed in value the sum of Thirty Thousand Dollars.

WHEREFORE your petitioners pray that a Receiver in Bankruptcy may be appointed herein by this Honorable Court, with the usual powers of Receivers in Bankruptcy in similar cases, and that service of this petition, with a subpœna, may be made upon said M. Zier & Company, as provided by the Acts of Congress relating to bankruptcy, and that said M. Zier & Company may be declared by this Court to be a bankrupt within the purview of said Acts

INLAND STEEL COMPANY,
JOHN C. THURSTON,
JOHN DEY, doing business as the
Dey Time Register Company,
By Andrew J. O'Donnell, their
duly authorized agent and
Attorney in Fact.

UNITED STATES OF AMERICA,
District of Indiana.

STATE OF ILLINOIS,
County of Cook. } ss.

Andrew J. O'Donnell, being first duly sworn on oath deposes and says that he is the duly authorized agent and attorney in fact of the above named petitioners; that he has read the foregoing petition by said petitioners subscribed, and knows the contents thereof, and that same is true in substance and in fact, except as to the matters therein alleged to be upon information and belief, and as to those matters he believes it to be true.

Said affiant makes this affidavit as the duly authorized agent and attorney in fact of all the petitioning creditors herein.

ANDREW J. O'DONNELL.

Subscribed and sworn to before me this Fourth day of February A. D. 1903

HELEN WEIL,
Notary Public.

[SEAL.]

And thereupon the following proceedings in the above entitled matter were had to-wit:

Upon the consideration of the petition of Inland Steel Company, John C. Thurston and John Dey, doing business as the Dey Time Register Company that M. Zier & Company be declared a bankrupt, it is ordered that the said M. Zier & Company do appear at this court, as a court of bankruptcy, to be holden at New Albany, in the District aforesaid, on the 28th day of February, 1903, at 9 o'clock in the forenoon

and show cause, if any there be, why the prayer of said petition ought not to be granted; and

It is further ordered that a copy of said petition, together with a writ of subpoena be served on said M. Zier & Co., by delivering the same to it personally or by leaving the same at its last and usual place of abode in said district, at least five (5) days before the day aforesaid.

And thereupon there issued out of the office of the clerk of said court a subpoena in the above entitled matter, in the words following, to-wit:

UNITED STATES OF AMERICA, }
District of Indiana. } *ss.*

To M. Zier & Company in said District Greeting:

For certain causes offered before the District Court of the United States of America, within and for the District of Indiana, as a court of bankruptcy, we command and strictly enjoin you, laying all other matters aside and notwithstanding any excuse that you personally appear before our said District Court to be holden at New Albany, in said District, on the 28th day of February, A. D. 1903, to answer a petition filed by the Inland Steel Company, John C. Thurston and John Dey, doing business as Dey Time Register Company in our said court praying that you may be adjudged a bankrupt and to do further and receive that which our said District Court shall consider in this behalf and this you are in no wise to omit under the pains and penalites of what may befall thereon.

Witness the Honorable A. B. Anderson, Judge of said Court, and the seal thereof, at New Albany, this 12th day of February, A. D. 1903.

NOBLE C. BUTLER, *Clerk*,
By George B. Cardwill,
Deputy Clerk.

Which said subpoena was afterwards, to-wit: on the 19th day of February, 1903, returned into the office of the clerk of said court, with the following return of the marshal endorsed thereon, to-wit:

I received this writ at Indianapolis Feb. 17, 1903, and on same day I served on the within named M. Zier & Company by reading to and in the hearing of Michael Zier Vice President of said company and handing him a true copy of this writ and at same time and place I delivered to him a copy of petition in Bankruptcy, he being the highest officer of said Company found in my district, at New Albany, Floyd County, Indiana. H. C. PETTIT,

U. S. Marshal,

By Alonzo Boyd,

Deputy.

And afterwards, to-wit: upon the 11th day of February, 1903, the Inland Steel Company, by its solicitors, filed its petition in the above entitled matter, in the words following, to-wit:

Your petitioner, Inland Steel Company, respectfully represents that it is a corporation organized under and by virtue of the laws of the State of Illinois and is a resident and citizen of the city of Chicago and State of Illinois. Your petitioner further represents that it is a creditor in amount of Nine Hundred Thirty-five Dollars ($935.) of M. Zier & Company alleged bankrupt, a corporation which has its principal place of business at the city of New Albany, County of Floyd, in the State of Indiana; that a petition has been filed by your petitioner and two other creditors to have said company adjudged a bankrupt which said petition was filed in this court on the 6th of February, A. D. 1903. That it is alleged in said petition that Joseph T. Ryerson & Son and

other creditors therein mentioned have received certain preferences from said alleged bankrupt within four months prior to the filing of said petition, contrary to the statute in such case made and provided, while said bankrupt was insolvent; that at the instance of said Joseph T. Ryerson & Son a receiver has been appointed by the Floyd Circuit Court of Floyd County, Indiana, to take charge of the assets of said alleged bankrupt; that the New Albany Trust Company is the receiver so appointed and that Henry E. Jewett, who is the attorney for said M. Zier & Company is also the Vice President of said New Albany Trust Company; that said receiver is now running the business of M. Zier & Company and is completing certain contracts and for that purpose has employed a large number of men in the manufacturing establishment of said M. Zier & Company and has placed in charge of said plant one Michael Zier, who is the Vice President and Treasurer of said alleged bankrupt; that said Michael Zier is wholly incompetent for said business, that he is wholly unfamiliar with bookkeeping and necessary office work which is essential to the safe conduct of said business, and your petitioner avers that if said receiver is permitted to remain in charge that it would result in injury and detriment of such of the general creditors of said M. Zier & Company who are entitled to participate in said bankrupt estate.

Your petitioner further states that W. W. and J. R. Watts, Attorneys at Louisville, Kentucky, are the attorneys for said Joseph T. Ryerson & Son in said proceedings wherein said New Albany Trust Company was appointed receiver and that said W. W. and J. R. Watts are also the attorneys for said receiver, and your petitioner fears that said receiver is friendly to said Joseph Ryerson & Son and to said alleged bankrupt to the detriment of the creditors at large of the said alleged bankrupt.

Your petitioner further alleges that it is absolutely necessary for the preservation of said estate for the benefit of all of the creditors who shall be entitled to participate therein that a receiver in bankruptcy be appointed herein forthwith to take charge of all of the assets of such alleged bankrupt and administer the same under the directions of this honorable court with the usual powers of receivers in such cases. Wherefore your petitioner prays that a receiver in bankruptcy be appointed forthwith and that such other and further orders be entered herein as to your honor shall seem meet and proper.

INLAND STEEL COMPANY,
By William Wilkartz its duly authorized agent and attorney in fact.

UNITED STATES OF AMERICA,
District of Indiana.
STATE OF INDIANA,
County of Marion. } ss.

William Wilhartz being first duly sworn on oath deposes and says that he is the duly authorized agent and attorney in fact in this behalf of the above named petitioner. That he has read the above and foregoing petition by said petitioner subscribed and knows the contents thereof and that said petition is true in substance and in fact except as to the matters therein alleged to be upon information and belief and as to those matters, this affiant, believes them to be true.

Said affiant makes this affidavit as the duly authorized agent and attorney in fact of said petitioner herein.

WILLIAM WILHARTZ.

Subscribed and sworn to before me this 7th day of February, A. D. 1903. M. H. PEACOCK,
Notary Public.

Commission expires April 19, 1906.

And afterwards, to-wit: upon said 11th day of February, 1903, before the Honorable Albert B. Anderson, judge of said court, the following further proceedings in the above entitled matter were had, to-wit:

Comes now the Inland Steel Company, petitioner in bankruptcy herein, which having filed its petition to have M. Zier & Company declared a bankrupt, now files its verified petition alleging that an emergency exists for the immediate appointment by the court of a Receiver herein, to take charge of the property and effects of said M. Zier & Company pending the hearing of said petition and the appointment of a trustee in bankruptcy herein. And the court being advised after due consideration, now finds that the prayer of said petitioner ought to be granted and that a Receiver ought to be appointed to take charge of the property and effects of said M. Zier & Company, previous to the hearing of said petition and the appointment of a trustee herein.

It is therefore considered and ordered by the court that Frederick D. Connor be and he is hereby appointed as receiver herein of the property of said M. Zier & Company, with authority to take charge and possession of all the same, and particularly the goods, wares and merchandise, books, papers and effects, of or belonging to said M. Zier & Company, located at the city of New Albany, Floyd County, Indiana, and now in the hands of the New Albany Trust Company as receiver of said M. Zier & Company appointed by the Floyd Circuit Court, of Floyd County, Indiana. And said Receiver is ordered and directed to take into his possession the sheet iron and boiler manufacturing plant in said city of New Albany, together with all the tools, machinery, appliances, material and finished products within and about said plant at said city of New Albany, which plant is located at the corner of Pearl and Oak Streets

of said city, and all other property of said M. Zier & Company wheresoever found and situated.

It is further ordered and adjudged by the court that the New Albany Trust Company be and it is hereby required to deliver up to said Frederick D. Connor, as Receiver, all the said property and effects of said M. Zier & Company now in its possession and to refrain hereafter from interfering in any way with the said Receiver's possession and control of the same.

It is further ordered that before entering upon the duties of his said trust herein, the said Frederick D. Connor shall execute to the clerk of this court, and file with the clerk of this court, a bond and sureties to the approval of this Court in the sum of Ten Thousand Dollars (10,000) for the faithful discharge of his duties as such Receiver and take the oath required by law of said office.

And afterwards, to-wit: upon said 11th day of February, 1903, The Inland Steel Company, by George H. Hester, its solicitor, filed its supplemental petition herein, in the words following, to-wit:

The petitioner herein, the Inland Steel Company, for further and supplemental petition herein, and as additional acts of bankruptcy committed by the said M. Zier & Company avers:

That on or about the 30th day of December, 1902, and previous to the filing of the original petition herein, on the 6th day of February, 1903, the said M. Zier & Co. was made the defendant in an action brought in the Floyd Circuit Court, in Floyd County, Indiana, by Joseph T. Ryerson & Son, in which the said Joseph Ryerson & Son prayed for a Receiver to take charge of the property and effects of the said M. Zier & Company; that the said M. Zier & Co. upon the filing of said action immediately appeared thereto waiv-

ing services of summons therein and consented to the appointment by the Floyd Circuit Court of the New Albany Trust Company as the receiver of its property and manufacturing establishment; that the said receiver was thereupon so appointed by the Floyd Circuit Court, and immediately took charge of all the property of said M. Zier & Co., and ever since said time said New Albany Trust Company as such receiver has been in complete charge of said property operating the same by the consent of said M. Zier & Co., and under orders of the Floyd Circuit Court; that said New Albany Trust Company as such receiver is represented by W. W. & J. R. Watts, Attorneys at Law, of Louisville, Ky., who are also the attorneys for the said Jos. T. Ryerson & Son, and who are procuring orders from the Floyd Circuit Court for the government of the matters of the said receiver; that said receiver is now under the orders of said court operating the manufacturing plant and boiler works of said M. Zier & Co. at the city of New Albany, and the petitioner fears that he is doing so in the interest of the said Jos. T. Ryerson & Son, and against the interest of the other creditors herein. That said receiver was appointed and put in charge of the property of the said M. Zier & Co. by the said Floyd Circuit Court because of the gross insolvency of the said M. Zier & Co.

INLAND STEEL CO.,
By George H. Hester,
their attorney.

STATE OF INDIANA, }
County of Marion. } *ss.*

George H. Hester being duly sworn on his oath says that matters stated in the foregoing petition are true as he verily believes.

GEORGE H. HESTER.

Subscribed and sworn to before me this 11th day of February, 1903.

NOBLE C. BUTLER,
Clerk of the U. S. District Court.

And afterwards, to-wit: on the 17th day of February, 1903 before the Honorable Albert B. Anderson, Judge of said court, the following further proceedings in the above entitled matter were had, to-wit:

This cause coming on now to be heard upon the petition of Frederick D. Connor, filed herein on the 16th day of February, A. D. 1903, for the instruction of the court concerning the property and assets of said M. Zier & Company, which are now in the possession of the New Albany Trust Company, as receiver of the Floyd Circuit Court, in a suit therein pending against said M. Zier & Company, because of their insolvency; and the petitioning creditors in this cause and said Connor, receiver as aforesaid, being now present and represented by George H. Hester and William Wilhartz, their solicitors, and said New Albany Trust Company, receiver as aforesaid, being now present and represented by Henry E. Jewett, its Vice President, and by William W. Watts, its solicitor, and after argument by counsel, the said New Albany Trust Company, as receiver of the Floyd Circuit Court, by its said Vice President, having voluntarily offered and agreed, by and with the consent and approval of said William W. Watts, its solicitor, in open court, to surrender full and immediate possession and control of the property and assets of said M. Zier & Company, in its possession or under its control, as receiver of the Floyd Circuit Court, to said Connor, as receiver of this court, upon the presentation by him to said New Albany Trust Company of a certified copy of the order for his

appointment as such receiver heretofore made by this court. It is now hereby ordered by the court that said Connor receiver as aforesaid, forthwith present a certified copy of the order for his appointment as such receiver to the said New Albany Trust Company, and immediately thereupon take full possession and control of the property and assets of said M. Zier & Company that are now in the possession or under the control of said New Albany Trust Company as receiver of the Floyd Circuit Court.

And afterwards, to-wit: on the 21st day of February, 1903, Frederick D. Connor Receiver of said M. Zier & Company, filed his petition herein, in the words and figures following, to-wit:

The undersigned, Frederick D. Conner, heretofore appointed as receiver, by this court, to take charge of the property and effects of the said M. Zier & Company, respectfully shows to the court:

That subsequent to the order made by the court herein, on the 17th day of February, 1903, directing the petitioner as receiver to present a certified copy of said order for his appointment as such receiver to the New Albany Trust Company, and immediately thereupon take full possession and control of the property and assets of M. Zier & Company, then in the possession and under the control of the said New Albany Trust Company, as receiver of the Floyd Circuit Court, and in obedience to the terms of said order, the said petitioner did on the 19th day of February, 1903, present to the New Albany Trust Company a certified copy of the said order for his appointment as such receiver, and demanded of said New Albany Trust Company as receiver that it turn over to him the full possession and control of all the property and assets of M. Zier & Company then in its possession as receiver of the Floyd Circuit Court; that

thereupon the said Trust Company, by and through Henry E. Jewett, its vice-president, submitted to the petitioner a certified copy of a petition filed by said receiver before the Floyd Circuit Court in chambers, stating that it was ready and willing to turn over to the petitioner the property and assets of said M. Zier & Company in its hands as receiver and further stating that it had not yet been able to make up its accounts as receiver, and praying for an order of said court authorizing it to turn over to this petitioner the property and assets of said M. Zier & Company now in its hands, together with any balance in cash which might remain after such statement of its accounts shall be made up and settled, and asking leave of court to resign as receiver of said M. Zier & Company; which said certified copy of petition is filed with this petition marked Exhibit "A," and made a part hereof; that said New Albany Trust Company, by said Henry E. Jewett, its vice-president, delivered to this petitioner a communication asking that the petitioner defer action until the said New Albany Trust Company could render its accounts and have the same passed on by the Floyd Circuit Court.

The petitioner further represents that he thereupon declined to grant further time, but demanded immediate possession of all the property and assets of said M. Zier & Company in the hands of said New Albany Trust Company, as receiver, and that the said New Albany Trust Company by said Jewett, its vice-president immediately turned over to this petitioner the custody of the building and plant of the said M. Zier & Company, within which is contained all of the property of said M. Zier & Company, excepting certain books and cash belonging to it; that thereupon the petitioner immediately proceeded to take possession of the tools, machinery, appliances, assets and all the property

contained in the manufacturing plant of said M. Zier & Company, which this petitioner believes embraced all of the property of said M. Zier & Company, excepting said books and cash in the possession of said New Albany Trust Company, receiver; that the petitioner thereupon put in charge a day-watchman to hold possession of said property during the day and a night-watchman to hold possession thereof during the night, and so retained possession of said plant until the 20th day of February 1903, at about 7.30 P. M.

The petitioner further says that on the 20th day of February 1903, at about 7.00 P. M. possession of said manufacturing plant and all the property of said M. Zier & Company was demanded of him by Charles D. Kelso, of New Albany, Indiana, as receiver appointed by the Floyd Circuit Court, in place of the New Albany Trust Company, then removed as receiver of said M. Zier & Company; that said demand was refused by this petitioner; that thereupon the petitioner was served by Raymond J. Morris, sheriff of Floyd County, Indiana, and Claude Citizen, Deputy Sheriff of said Floyd County, with a certified copy of on order of the Floyd Circuit Court made in the matter of the receivership of M. Zier & Company, pending before it, a copy of which is filed herewith marked Exhibit B and made part hereof; that at the same time the petitioner was served with a writ issued by the Floyd Circuit Court on the 20th day of February, 1903, to the Sheriff of Floyd County requiring him to forthwith take from the petitioner possession of the boiler plant of M. Zier & Company, together with all the tools, machinery, appliances, books, papers, accounts, choses in action and all other property belonging to said M. Zier & Company and finally the premises of said M. Zier & Company, at its plant in the City of New Albany, Indiana, a copy of which order is filed herewith marked Exhibit C, and made part hereof.

The petitioner further says that thereupon the said Raymond J. Morris, sheriff of said County of Floyd, forcibly took possession, from this petitioner and his agents and employes in charge of said manufacturing plant of said M. Zier & Company, of said property and assets of M. Zier & Company and delivered the same over to Charles D. Kelso, appointed as receiver of said property by the Floyd Circuit Court as aforesaid; that thereupon said Charles D. Kelso immediately took possession of said plant and of such property, and that he, the said Kelso, together with his agents and employes, are now in the possession of the same and restraining this petitioner from the possession thereof and the exercise of any authority over the same.

That this petitioner believes the above stated proceedings were procured to be had by William W. Watts, Esq., of Louisville, Ky., who during the continuation of the New Albany Trust Company, as receiver of M. Zier & Company, represented said Trust Company as such; that said Charles D. Kelso is now represented by one D. A. Sachs, Esq., of Louisville, Ky., an attorney-at-law, and that the petitioner believes that said Sachs also assisted in procuring the orders of the said Floyd Circuit Court above set out, and the petitioner further says that he verily believes the forcible removal of said property from his possession and control as receiver appointed by this court as aforesaid, was brought about by the joint action and efforts of said Charles D. Kelso, as receiver, and Charles D. Kelso, individually, and William W. Watts, as attorney for said New Albany Trust Company, and D. A. Sachs, attorney for said Charles D. Kelso, receiver.

Wherefore the premises being considered, the petitioner prays the court that the said Charles D. Kelso, as receiver of said M. Zier & Company, and Charles D. Kelso, indi-

vidually, Raymond J. Morris, as sheriff of said Floyd County, Indiana, and Raymond J. Morris, individually, Claude Citizen, as deputy sheriff of said Floyd County, and Claude Citizen, individually, Thomas Smithwick, as custodian of said plant of M. Zier & Company, and Thomas Smithwick, individually, William W. Watts, as attorney for said New Albany Trust Company, and D. A. Sachs, as attorney for said Charles D. Kelso, Receiver, be enjoined and restrained from in any manner taking or keeping from the possession of this petitioner said property and estate of said M. Zier & Company; that they may be required and directed to immediately redeliver to this petitioner as such receiver said property and estate so unlawfully taken from them, and that they may be cited to appear before this court at a time fixed by this court and show cause why they should not be punished for contempt for the violation of the orders of this court heretofore made herein.

And the petitioner further prays for directions as to what he shall do with respect to said property.

FREDERICK D. CONNER.

STATE OF INDIANA, }
County of Marion. } *ss.*

Frederick D. Conner, being duly sworn, on his oath, deposes and says, that the matters stated in the foregoing petition are true as he verily believes.

FREDERICK D. CONNER.

Subscribed and sworn to before me this 21st day of February, 1903.

NOBLE C. BUTLER,
Clerk.

FRED D. CONNER,
Receiver U. S. District Court,
District of Indiana.

In view of your demand that as receiver of the Floyd Circuit Court we deliver you the property of M. Zier & Company, as such receiver will state.

We this morning filed before Judge of the Floyd Circuit Court in chambers, report, a copy of which is attached hereto. Thereupon the Judge stated orally that he wanted us to hold the property until our accounts as receiver were rendered and passed upon. We think this might be done tomorrow, and if you are willing to defer action until then it will relieve us of embarrassment in the premises.

On the other hand if you insist on immediate surrender of the property to you, we are bound to say that we believe that to carry out in good faith the understanding with the Honorable Judge of the United States District Court of Indianapolis and our vice-president, H. E. Jewett, we ought to surrender the property to you at once.

Very truly yours,
THE NEW ALBANY TRUST COMPANY,
By H. E. Jewett,
Vice President

February 19th, 1903.

STATE OF INDIANA, } *ss.*
Floyd County. }

Joseph T. Ryerson & Son, }
vs. }
M. Zier & Company. }

To the Honorable Judge of the Floyd Circuit Court, in Chambers:

The New Albany Trust Company, Receiver in the above entitled cause, respectfully shows to this court that in pursuance of the order made by this court it appeared before

Judge A. B. Anderson, of Indianapolis, Judge of the United States District Court for the District of Indiana, on Monday, the 16th day of February, 1903, and that upon the hearing in that court this receiver stated to the Honorable Judge of said United States District Court, that it was ready and willing to turn over to the receiver appointed by the Honorable Federal Court in the bankruptcy proceedings of M. Zier & Company then pending in said court, the property and assets of said M. Zier & Company in the hands of this receiver, and this receiver further states that it has not yet been able to make up its accounts as receiver, but that it is now preparing the same to be submitted to this court; but that it is ready to turn over to Frederick D. Conner, the receiver appointed by the United States District Court in bankruptcy, all of the property of the said M. Zier & Company, and this receiver now prays for an order of this court authorizing him to turn over to said Frederick D. Conner, the property and assets of said M. Zier & Company now in its hands, together with any balance in cash which may remain after such statement of its accounts shall be made up and settled, and that upon delivering said property to said Frederick D. Connor, receiver aforesaid, it be discharged from all further liability for or on account of said property or assets of said M. Zier & Company so turned over to such Connor as such receiver.

This receiver further asks that upon making up and presentation of its account for allowance to this court, that it be allowed to resign as receiver of the said M. Zier & Company and that upon the approval of its accounts its said resignation be accepted by this court, and that it be fully and finally discharged as such receiver.

All of which is respectfully submitted,

THE NEW ALBANY TRUST COMPANY,

By Henry E. Jewett, *Vice President.*

Henry E. Jewett, being duly sworn on his oath says that he is the vice-president of the New Albany Trust Company, and makes this affidavit on behalf of said company; that the statements contained in the foregoing petition are true in substance and fact as he verily believes.

HENRY E. JEWETT.

Subscribed and sworn to before me this 19th day of February, 1903.

CHARLES B. SCOTT,
Clerk F. C. C.
By William Rouff,
Deputy.

STATE OF INDIANA, } *Sct.:*
Floyd County. }

Be it remembered, that at the January Term, 1903, of the Floyd Circuit Court, on the 14th day of February, 1903 before the Hon. William C. Utz, Sole Judge, among other the following proceedings were had, to-wit:

Joseph T. Ryerson & Son, *Plaintiff.*
vs.
M. Zier & Co., *Defendant.*

ORDER ON PETITION OF RECEIVER CONCERNING BANKRUPTCY PROCEEDINGS.

Came the New Albany Trust Company, receiver herein and files its petition herein showing to the Court divers matters concerning the filing of a petition in the District Court of the United States for the District of Indiana, by the Inland Steel Company, John C. Thruston and Dey Time Register Company, as creditors of said M. Zier & Company

in involuntary bankruptcy and a petition seeking the appointment of a receiver therein to take charge of the assets in this Court's possession through its receiver herein, whereupon such an order was entered, Frederick D. Connor being named as receiver and being directed to take possession of such assets, and further showing to the Court that the record in said cause disclosed the fact that said court was not fully advised as to the various orders, injunctions, restraining orders and estoppels by entries of appearance and participation in these proceedings by divers creditors of this estate, including said Inland Steel Company and Dey Time Register Company, petitioning creditors therein, and further showing that because of the immediate adjournment of this court, and its convention not being again had until March 9, 1903, and the operation of the plant herein made by and with the advice of much more than a majority in number and amount of the creditors herein, including said Inland Steel Company, such petitioning creditor in bankruptcy and this court now, after having read said petition and having considered the various exhibits referred to in such receiver's petition, and the entire record of this cause and being fully advised, is of the opinion that had said District Court of the United States for the District of Indiana been fully advised of the divers matters herein occurring it would not have entered such order as has been therein entered; that because of the comity existing between the courts of this Country, State and Federal, its order would at most have directed any attempt to take the assets herein to be by intervention in this cause and that only, and being of the opinion that said District Court will coincide with these views and a state of necessity for the entry of this order existing, it is now ordered that the Receiver herein conduct the operation of the plant herein as hertofore ordered and

directed; that said Inland Steel Company, John C. Thruston, Dey Time Register Company, Frederick D. Connor, individually and as Receiver, and Henry C. Pettit, individually and as Marshal of the District Court of the United States for the District of Indiana, and all others in any capacity, be and they are hereby enjoined from in any wise molesting, interfering with, or attempting by legal process or otherwise to take possession of the estate of M. Zier & Co., in the hands of this Court through its Receiver herein, and in the hands of said Receiver until the further order of this Court and except by intervention in this cause.

And said Receiver is now hereby ordered and directed, through its attorney, to proceed to Indianapolis, Indiana, and there, by a limited appearance and by protestation against appearance, only, by petition upon such appearance only, lay before said District Court of the United States for the District of Indiana the facts with regard to the matters herein, said injunction, restraining order and said estoppels, and to suggest to said Court the orders of this Court and the fact that had it been fully informed, as is believed by this Court, its order with respect to the assets herein would, at the most, have been a direction to make an application to this Court at the proper time and in the proper way, for delivery of the said assets to such District Court's receiver or trustee, after proper disposition and settlement of the matters herein.

The Court being further advised and on motion of said New Albany Trust Company, Receiver, it is ordered that the Inland Steel Company, John C. Thurston, The Dey Time Register Company, be and they are hereby ordered to appear and show cause why they have prosecuted said petition in involuntary bankruptcy, why they have filed said petition seeking the appointment of a receiver for the assets of this

estate, why they have sought to take from this court the assets of this estate, why they should not be punished for contempt for disobeying the orders of this Court without first obtaining leave of the Court by petition of intervention or order in this cause. And they are hereby commanded to show such cause on or at the time of the first day of the next term of this Court. And service of a copy of this order upon Jacob Hoerter and George H. Hester because of their apparent representation of said petitioning creditors and then said co-counsel for the purpose of this show cause order shall be deemed sufficient for the service thereof on all said persons and parties.

And it is further ordered that this Court shall retain such control of said matters as may be necessary for the purpose of the entry of any and all such orders as may be deemed proper and necessary herein and therein.

And Jacob Herter and George H. Hester such attorneys now being present in court and Hester having been heard in opposition to the said petition and having notice of the entry of this order, It is now ordered that no other or further notice hereof need be given the said Inland Steel Co., John C. Thurston, and Dey Time Register Co., petitioners in said bankruptcy proceedings. And comes now C. D. Kelso and asked leave of the Court to withdraw as the attorney of record for the following named parties: United Gas and Electric Company; United States Tube Company, Indiana Water Company and Simon E. David and the Court now permits the said C. D. Kelso to withdraw herefrom."

STATE OF INDIANA, }
County of Floyd. } *ss.*

I, Charles B. Scott, Clerk of the Floyd Circuit Court, within and for the County of Floyd and State of Indiana

do hereby certify that the above and foregoing is a full, true and complete copy of an entry of record and order of Court made in the receivership of M. Zier & Company, and in the case of Joseph T. Ryerson & Son versus M. Zier & Company, as the same appears of record in my office.

Witness my hand and the seal of said Court hereto affixed at New Albany, Indiana this 20th day of February 1903.

CHARLES B. SCOTT,
Clerk Floyd Circuit Court.
By William Ruoff,
Deputy.

[SEAL.]

(Copy.)

STATE OF INDIANA.

To the Sheriff of Floyd County, Greeting:

By order of the Honorable William C. Utz, Judge of the Floyd Circuit Court, which order was made in Vacation, you are hereby commanded and required to forthwith take from Frederick D. Connor the possession of the boiler plant of M. Zier & Co. situated on the northeast corner of Pearl and Oak Streets in the City of New Albany, Indiana together with all the tools, machinery, appliances, books, papers, accounts, choses in action and all other personal property belonging to said M. Zier & Co. and found in the premises of said M. Zier & Co. at said point in the City of New Albany, Indiana being the same property wrongfully and without leave of this Court surrendered to said Frederick D. Connor by the New Albany Trust Company formerly receiver of M. Zier & Co. and you are further required by the order of said Judge of said Court to forthwith deliver said above described property to Charles D. Kelso receiver of said M. Zier & Co. and of this writ make due service and immediate return thereof.

Witness Charles B. Scott, Clerk of the Floyd Circuit Court and the seal hereto affixed at the Court House in the City of New Albany this 20th day of February, 1903.

CHARLES B. SCOTT,
Clerk Floyd Circuit Court.
By William F. Ruoff,
Deputy.

[SEAL.]

And afterwards, to-wit, on the 21st day of February, 1903, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings were had in the above entitled cause, to-wit:

This cause coming on now to be heard on the petition of Frederick D. Connor, receiver of this court, filed herein on the 21st day of February, 1903, for an order of injunction restraining Charles D. Kelso, as receiver of M. Zier & Company under appointment of the Floyd Circuit Court, Charles D. Kelso, individually, Raymond J. Morris, Sheriff of Floyd County, Indiana, Raymond J. Morris, individually, Claude Citizen, deputy sheriff of Floyd County, Indiana, Claude Citizen, individually, Thomes Smithwick, custodian of the property of said M. Zier & Company under alleged appointment of Charles D. Kelso, as receiver of the Floyd Circuit Court, Thomas Smithwick, individually, William W. Watts, and D. A. Sachs, individually, and each of them, from detaining the possession of the property of said M. Zier & Company from said Frederick D. Connor, receiver of this court, and for an order requiring said parties and each of them to re-deliver up to said Frederick D. Connor, receiver of this court, all of said property, and the Court having considered said petition and it being shown to the satisfaction of the court that the matters stated therein are true,

It is now ordered by the Court that Charles D. Kelso, as receiver of M. Zier and Company under the appointment of

the Floyd Circuit Court, and individually, Raymond J. Morris, as sheriff of Floyd County, Indiana, and individually, Claude Citizen, deputy sheriff of Floyd County, Indiana, and individually, Thomas Smithwick, custodian of the property of said M. Zier and Company under an alleged appointment of Charles D. Kelso as receiver of the Floyd Circuit Court and individually, William W. Watts and D. A. Sachs, as attorneys for Charles D. Kelso, receiver as aforesaid, and individually, and each of them be and they are hereby required to appear before this court at Indianapolis in this District on Wednesday the twenty-fifth day of February, 1903, at nine o'clock, a. m. of said day and show cause if any they have why they should not re-deliver the property of M. Zier and Company into the possession and custody of Frederick D. Connor, as receiver of this court, and in the meantime, and until the further order of this court that they and each of them, their agents, attorneys, servants and employees, and each of them be and they are hereby restrained and prohibited from in any way interfering with said property, or making any disposition of the same.

It is further ordered by the Court that Charles D. Kelso as receiver of M. Zier and Company under the appointment of the Floyd Circuit Court, and individually, Raymond J. Morris, sheriff of Floyd County, Indiana, and individually, Claude Citizen, deputy sheriff of Floyd County, Indiana, and individually, Thomas Smithwick, custodian of the property of said M. Zier and Company under an alleged appointment of Charles D. Kelso as receiver of the Floyd Circuit Court, William W. Watts and D. A. Sachs as attorneys for Charles D. Kelso as such receiver, and individually, and each of them, are hereby required to appear before this court at Indianapolis in this District on Wednesday the twenty-fifth day of

February, 1903, at nine o'clock a. m. of said day, and then and there show cause why they should not be punished for contempt for the violation of the orders of said court heretofore made herein.

It is further ordered by the court that the Marshal of this District shall serve each of the parties named in the foregoing order by the delivery of a copy thereof to them and each of them.

And afterwards, to wit: on the 25th day of February, 1903, before the Honorable Albert B. Anderson, Judge of said court, the following further proceedings in the above entitled matter were had, to-wit:

Raymond J. Morris and Claude Sittason appear in person and by Evan B. Stotsenberg, their attorney, and Charles D. Kelso and Thomas Smithwick appear in person and by William A. Ketcham, their attorney, and file their several answers to the petition of the Receiver for orders against them, and the Receiver files his several replies thereto.

And afterwards, to-wit: on the 25th day of February, 1903, aforesaid, before the Honorable Albert B. Anderson, Judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

It is ordered by the court, that, so far as the proceedings upon the petition of the Receiver filed on the 21st day of February, 1903, are instituted against the parties named therein for a contempt of this court, they shall be docketed in this court at Indianapolis and henceforth conducted under the title of the United States against the parties aforesaid:

UNITED STATES OF AMERICA, }
District of Indiana. } *ss.*

I, Noble C. Butler, clerk of the District Court of the United States within and for said District, do hereby certify

that the above and foregoing is a full and true and complete transcript of the record and files in the matter of M. Zier & Company, alleged bankrupt, except the petition of Frederick D. Connor, Receiver in said matter, filed on the 16th day of February, 1903, and the order of adjudication in bankruptcy, entered on the 9th day of March, 1903, as fully as the same appear upon the records and files now in my office.

WITNESS my hand and the seal of said Court, at Indianapolis in said District, this 11th day of March, A. D. 1903.

NOBLE C. BUTLER,
Clerk.

UNITED STATES DISTRICT COURT,
FOR THE DISTRICT OF INDIANA.

IN THE MATTER OF M. ZIER & CO. ALLEGED BANKRUPT
No. 37 IN BANKRUPTCY, AND

UNITED STATES,
vs.
Charles D. Kelso,
William W. Watts,
and others.
No. 6377.

THE SEPARATE RESPONSE AND PLEAS OF WILLIAM W. WATTS TO THE RULE AND INFORMATION HEREIN:

1. The respondent and defendant, William W. Watts, says he is not guilty of the alleged contempt stated in the said rule and information, or either of them.

2. Denying that he committed any act or advised or consented to the commission of any act in disobedience of any order of the District Court of the United States for the

District of Indiana entered or made by said Court in the matter of M. Zier & Company, bankrupts, case No. 37 pending in said Court at New Albany, Indiana, and denying further that he did in any way, either directly or by aiding, abetting, or advising, forcibly, or in any other way take from Frederic D. Connor, Receiver in said bankrupt proceedings, the property, goods and chattels of said M. Zier & Co., bankrupt, or any of them, or in any way, either directly, or by aiding, abetting, or advising withhold the custody of the said property, goods and chattels, or any of them, from the said Frederic D. Connor, Receiver: Yet the defendant and respondent says that the orders of the said District Court of the United States made in said bankrupt proceedings ordering and directing said Frederic D. Connor, Receiver, to take said property, goods and chattels of M. Zier & Co. into his custody, were and are void, because he says the said court had no jurisdiction to make said orders, or either of them, and the making of said orders, and each of them was beyond the power of the said Court; and the possession of said property by said Frederic D. Connor, Receiver, was wrongfully and unlawfully obtained by him, and the re-taking of said property from the possession of said Receiver, under and pursuant to the orders and writ of the Floyd County (Indiana) Circuit Court, was a lawful and proper taking. All of which will appear from the affirmative statements of the particular facts hereinafter made.

3. This defendant and respondent further states that on the 30th day of December, 1902, Joseph T. Ryerson & Son filed their certain complaint in the Floyd Circuit Court of the State of Indiana against M. Zier & Co., defendant, and on the same day caused to be issued by the Clerk of said Floyd Circuit Court, and there was duly issued by the said

Clerk a summons upon the said complaint against M. Zier & Co., which said summons on the same day of its issuance came duly to the hands of the Sheriff of Floyd County, Indiana, and was by him on the same day duly served on the defendant, M. Zier & Co. The said complaint of Joseph T. Ryerson & Son against M. Zier & Co. so filed in the Floyd Circuit Court averred an indebtedness of $15,000 of the said defendant, M. Zier & Co., to the plaintiff, Joseph T. Ryerson & Son, upon certain promissory notes stated in the complaint, and the said complaint prayed judgment in favor of said plaintiffs against said defendants in said sum of money.

The said complaint averred these further facts, that the defendant, M. Zier & Co., is a corporation duly created and organized under the laws of the State of Indiana, and authorized to and was carrying on as such corporation the business of manufacturing boilers in the City of New Albany, in the County of Floyd and State of Indiana; that the said business was a large business; that the said defendant was indebted in the aggregate to divers persons in at least the sum of $65,000; that it was unable to meet its said obligations; that its creditors were threatening to enter suits against it; that the property and assets of said defendant corporation consisted of a manufacturing plant, which was in operation, and which was employed in filling unfinished orders, and working on unfinished contracts; that the defendant was without means or money with which to continue the operation of its said business, and that if suits should be instituted against it, and its property seized upon executions or attachments, the assets and property of the defendant would be dissipated and its plant rendered much less valuable to its creditors generally than if the said property were properly preserved and continued as a going concern; and

that the property, funds and profits of the business of the said defendant were in danger of being lost and materially injured and destroyed, unless a Receiver were immediately appointed to take charge of said property and hold the custody and possession thereof, and preserve the same for such disposition thereof as the Court might adjudge.

The said Floyd Circuit Court, of the State of Indiana, and the Judge thereof in vacation were and are by the Statutes and laws of the State of Indiana authorized and empowered to appoint Receivers of and for insolvent corporations and their property and assets; that the said Floyd Circuit Court is a constitutional Court, and the Judge thereof a constitutional officer, made such by the Constitution of the State of Indiana, and the said Floyd Circuit Court is by the Constitution and laws of the State of Indiana a Court of general, original jurisdiction.

On the same day on which said complaint was as aforesaid filed in the Floyd Circuit Court, and after it was filed and after the issuance of summons thereon, the plaintiffs in said action of Joseph T. Ryerson & Son, after due notice thereof to the defendant, M. Zier & Co., moved the Hon. William C. Utz, who was and is the duly elected, commissioned, qualified and acting Judge of the said Floyd Circuit Court, to appoint a Receiver of the property and assets of the defendant, M. Zier & Co., in pursuance of the prayer of the said complaint. The said defendant, M. Zier & Co., appeared to said motion and, after due consideration thereof, the said Judge sustained said motion and appointed by his order, duly made and entered, the New Albany Trust Company as Receiver of the said defendant, M. Zier & Co., and of all of its assets and property. The said New Albany Trust Company is a corporation created and organized under the laws of the State of Indiana with full corporate powers,

among other things to act as Receiver under the appointment of Courts. That the said New Albany Trust Company immediately upon its said appointment duly qualified as such Receiver, and then and there took upon itself the duties of said Receivership, and took the oath as required by law and by said order of appointment. That immediately after its said appointment and qualification as Receiver aforesaid, and on the same day on which it was appointed as such Receiver, and under the order of the said Floyd Circuit Court, the said New Albany Trust Company, as such Receiver, took into its possession all of the said property and assets of the said defendant, M. Zier & Co, That after its said appointment, the said Receiver, made out an inventory of the property of the said M. Zier & Co., which it had taken possession of under its said appointment as such Receiver on the 30th day of December, 1902, and caused the same to be appraised, which inventory and appraisement were filed in the said Floyd Circuit Court in said action, and said inventory shows, and it is true, that the appraised value of said property was about $28,500. That on the 16th day of January, 1903, the said Receiver filed in the Floyd Circuit Court its report and petition wherein it sought the advice and instruction of said Court with respect to the continuance of the operation of said plant and prayed the Court that a time be fixed for the hearing of said report and petition, and further prayed that said M. Zier & Co. and its officers, and the creditors of said M. Zier & Co., be notified by mail and by publication of the time and place of the hearing of said report and petition, and that the said creditors be requested to appear and make known their objections, if any, to the continuance of the operation of the plant of the said M. Zier & Co. Said petition further prayed that all creditors of M. Zier & Co. be required to prove their

claims against said estate by filing proof thereof with the said Receiver, or by intervening petition in said case, and that all creditors and persons be restrained and enjoined from prosecuting suits involving said assets in any manner except by intervening petition in said action.

And thereupon, upon consideration of said petition, the Floyd Circuit Court made a certain order on the 16th day of January, 1903, directing said Receiver to continue the operations of the said business of the said M. Zier & Co. and to carry out certain contracts for manufacturing boilers and appliances, which were stated in said order, and further directed that a hearing be had of the creditors of the said M. Zier & Co. on the 24th day of January, 1903.

On the 24th day of January, 1903, the time fixed for the hearing of the said creditors of the said defendant, it was made to appear to the said Court by the said Receiver that all of the creditors of the said M. Zier & Co., as shown by the books of the said M. Zier & Co., had been notified by the said Receiver to be present on said 24th day of January, 1903, to be heard on said matters, and on said day a large majority in number and amounts of the creditors of the said M. Zier & Company appeared in said Court, among whom was the Inland Steel Company, and were heard upon the said petition of said Receiver, and thereby they became and were and are parties to said action; and after said hearing and the Court being sufficiently advised, the said Court ordered and directed that the said Receiver carry out and complete all unfinished contracts of the said defendant, M. Zier & Co., and the said Court gave to said Receiver power and authority to purchase new material for this purpose, but ordered said Receiver not to make any new contracts, and gave to said Receiver divers other orders and directions, and further ordered that all creditors and other persons be

enjoined and restrained from prosecuting any claims or suits against said estate in the hands of said Receiver except by intervening in said cause, or by first obtaining leave of said Court in said action.

The respondent and defendant further states that on the 6th day of February, 1903, the Inland Steel Company, a creditor who had appeared and was a party to said action in said Floyd Circuit Court, and John C. Thruston and John Dey doing business as the Dey Time Register Company, filed their certain petition in involuntary bankruptcy in the District Court of the United States for the District of Indiana against M. Zier & Co. alleging certain acts of bankruptcy committed by M. Zier & Co. and praying that the said M. Zier & Co. be adjudged a bankrupt. The said petition in bankruptcy further alleged "That, under certain proceedings in a State Court, a Receiver has been appointed of the assets of said corporation, M. Zier & Co., and is attempting to collect assets of said estate and incurring petty expenses in and about said estate which must be borne by the creditors thereof, and your petitioners aver that it is absolutely necessary for the preservation of said estate of M. Zier & Co. for the benefit of all of its creditors that a Receiver in bankruptcy be appointed herein forthwith."

On the 11th day of February, 1903, the said Inland Steel Company filed in said proceedings in bankruptcy its certain petition in which it stated among other things "That at the instance of said Joseph T. Ryerson & Son, a Receiver has been appointed by the Floyd Circuit Court of Floyd County, Indiana, to take charge of the assets of said alleged bankrupt; that the New Albany Trust Company is the Receiver so appointed, and that Harry E. Jewett who is the attorney for said M. Zier & Co. is also the Vice President of said New Albany Trust Company; that said Receiver

is now running the business of M. Zier & Co. and is completing certain contracts and for that purpose has employed a large number of men in the manufacturing establishment of said M. Zier & Company and has placed in charge of said plant one Michael Zier who is the Vice President and Treasurer of said alleged bankrupt; that said Michael Zier is wholly incompetent for said business; that he is wholly unfamiliar with bookkeeping and necessary office work which is essential to the safe conduct of said business, and your petitioner avers if said Receiver is permitted to remain in charge that it would result to the injury and detriment of such of the general creditors of said M. Zier & Co. who are entitled to participate in said bankrupt estate.

"Your petitioner further states that W. W. and J. R. Watts, attorneys at Louisville, Ky. are the attorneys for said Joseph T. Ryerson & Son in said proceedings wherein the said New Albany Trust Company was appointed Receiver and that said W. W. & J. R. Watts are also attorneys for said Receiver, and your petitioner fears that said Receiver is friendly to said Joseph T. Ryerson & Son and said alleged bankrupt to the detriment of the creditors at large of said alleged bankrupt. Your petitioner further alleges that it is absolutely necessary for the preservation of said estate for the benefit of all the creditors who shall be entitled to participate therein that a Receiver in bankruptcy be appointed herein forthwith to take charge of all the assets of said alleged bankrupt and administer the same under the directions of this honorable court with the usual powers of Receivers in such cases. Wherefore your petitioner prays that a Receiver in bankruptcy be appointed forthwith and that such other and further orders be entered herein as to Your Honor shall seem meet and proper."

And upon the same day, to-wit, on the 11th day of February, 1903, the said District Court of the United States

for the District of Indiana in said bankrupt proceedings, upon consideration of said petition filed by the Inland Steel Company, entered and made an order directing among other things as follows, to-wit:- "It is therefore considered and ordered by the Court that Frederick D. Connor be and he is hereby appointed as Receiver herein of the property of said M. Zier & Co. with authority to take charge and possession of all the same and particularly the goods, wares and merchandise, books, papers and effects of or belonging to said M. Zier & Co. located at the City of New Albany, Floyd County, Indiana, and now in the hands of the New Albany Trust Company, as Receiver of said M. Zier & Co., appointed by the Floyd Circuit Court of Floyd County, Indiana. Said Receiver is ordered and directed to take into his possession the sheet iron and boiler manufacturing plant in said City of New Albany, together with all the tools, machinery, appliances, materials and finished products within and about said plant at said City of New Albany, which said plant is located at the corner of Pearl and Oak Streets in said city and all other property of said M. Zier & Company wheresoever found and situated. It is further ordered and adjudged by the Court that the New Albany Trust Company be and it is hereby required to deliver up to said Frederic D. Connor as Receiver all the said property and effects of said M. Zier & Company now in its possession, and to refrain hereafter from interfering in any way with the said Receiver's possession and control of the same."

And Frederic D. Connor duly accepted said appointment as the Receiver of the District Court of the United States for the District of Indiana in said bankrupt proceedings and duly qualified and executed bond as such as is required in the said order of appointment.

On the 13th day of February, 1903, Frederic D. Connor, as Receiver of the said United States District Court in said

bankrupt proceedings, and acting under the order appointing him as such Receiver, as defendant and respondent was informed and believed, appeared at New Albany, Indiana, and demanded of the New Albany Trust Company that it deliver to him the assets and effects of M. Zier & Co. which it held and had in its possession as Receiver of said Floyd Circuit Court.

The respondent and defendant and the New Albany Trust Company, receiver as aforesaid, believed that the said United States District Court and the Judge thereof were not fully informed of the exact situation and condition of the proceedings in the said Floyd Circuit Court and believed that the said order appointing said Frederic D. Connor receiver of said United States District Court in said bankrupt proceedings was made under a misapprehension of the facts relating to said proceedings and action in the said Floyd Circuit Court, and so believing this defendant and respondent and the said New Albany Trust Company conferred with respect to the demand of the said Frederic D. Connor, Receiver of the said United States District Court that the said property of the said M. Zier & Co. in the hands of said Receiver of said Floyd Circuit Court be turned over to him as Receiver of the said United States District Court, and the result of said conference was that this respondent telephoned to the Judge of the United States District Court for the District of Indiana at Indianapolis, and requested him to direct the said Frederic D. Connor not to proceed further with his demand until this defendant and respondent and the New Albany Trust Company could appear before him and explain to him the exact circumstances and condition of the action of Joseph T. Ryerson & Son against M. Zier & Co., pending in the said Floyd Circuit Court. And the said Judge of the United States District Court stated, or caused

it to be stated over the telephone, that such appearance might be made on the following Monday, to-wit, February 16th, 1903, and did direct the Receiver, Frederic D. Connor, for the time being, to suspend his demand for the possession of said property.

On the 14th day of February, 1903, the said Frederic D. Connor, as said Receiver of the United States District Court, by George H. Hester, as his attorney, appeared in the said Floyd Circuit Court in said action of Joseph T. Ryerson & Son against M. Zier & Co. and filed his verified petition therein, showing his appointment as such Receiver by order of the United States District Court for the District of Indiana and praying said Floyd Circuit Court for an order requiring the said New Albany Trust Company, as Receiver of said M. Zier & Co., to turn over and surrender to him, the said Frederic D. Connor, as Receiver in Bankruptcy the property of the said M. Zier & Co., of which the said New Albany Trust Company, as Receiver of M. Zier & Co. under the orders of the said Floyd Circuit Court was custodian, and thereupon said Frederic D. Connor as such Receiver was made a party to said suit and the matter of said petition was continued until the next term of said Floyd Circuit Court.

The defendant and respondent prepared for the New Albany Trust Company, Receiver of the said Floyd Circuit Court, a petition for advice in which it was stated that Frederic D. Connor had been appointed by the United States District Court in the said bankruptcy proceedings, Receiver for the property and effects of M. Zier & Co., and that the order of appointment directed him to take possession of said property, and stated that in the opinion of the Receiver of the Floyd Circuit Court, namely, the New Albany Trust Company, said order had been made under

some misapprehension, and stated also the fact that the respondent and defendant had telephoned to the Judge of the United States District Court, and that said Judge stated that he would hear the matter on Monday, the 16th day of February, 1903, and requested the said Floyd Circuit Court to authorize the New Albany Trust Company, or its Vice-President, Henry E. Jewett, and this defendant and respondent as its attorney to specially appear in the United States District Court at Indianapolis and make a full and complete explanation of the exact condition of the record in the said action of Joseph T. Ryerson & Son against M. Zier & Co., pending in the said Floyd Circuit Court, and accordingly said petition was filed on the 14th day of February, 1903, and thereupon on said day the said Floyd Circuit Court entered an order among other things authorizing this defendant and respondent and Henry E. Jewett, Vice-President of the New Albany Trust Company to appear before the United States District Court at Indianapolis by way of protestation and specially and present to said Court the exact condition of the said action in the said Floyd Circuit Court. All this was done solely for the purpose of preventing any posisble conflict between the two jurisdictions, and it was believed by this defendant and respondent, and by the said New Albany Trust Company, and by the Judge of the Floyd Circuit Court, that upon such presentation, the United States District Court would rescind its said order appointing said Frederic D. Connor as Receiver and directing him to take possession of said property of M. Zier & Co. Under this authorization, and not otherwise, this defendant and respondent and Henry E. Jewett, Vice-President of the New Albany Trust Company, Receiver of the said Floyd Circuit Court, did appear in the District Court of the United States, for the District of Indiana, at Indianapolis on Monday,

February 16th, 1903, and exhibited to the Court, the said order of the Floyd Circuit Court, authorizing them to appear, and made the said Court a full and complete statement of the condition of the said action of Joseph T. Ryerson & Son against M. Zier & Company in the Floyd Circuit Court.

But so it is that after said explanation and statement had been made and argued by this defendant and respondent, before the Judge of the said United States District Court, which argument and explanation consumed several hours, and continued over from Monday, February 16th, until Tuesday, February 17th, the Judge of the said United States District Court, refused in any way or to any extent to reconsider, modify or set aside his said order appointing Frederic D. Connor, Receiver, and demanded of Henry E. Jewett, as the representative of the New Albany Trust Company, Receiver, to state whether or not he would turn over the property in the hands of the New Albany Trust Company as Receiver aforesaid, to Frederic D. Connor, Receiver, and demanded of this defendant and respondent whether or not he, as counsel for the New Albany Trust Company, Receiver, would advise it to turn over said property to Frederic D. Connor, Receiver. Under these circumstances, and not otherwise, and believing that the said demand of said Judge of the said United States District Court was peremptory, this defendant and respondent, as counsel for the said New Albany Trust Company, stated that he would advise the said New Albany Trust Company to turn over the said property to the said Frederic D. Connor, Receiver.

On the 17th day of February, 1903, this defendant and respondent, and the said Henry E. Jewett, left Indianapolis, and this defendant and respondent was under the impression that it was not necessary to enter any order respecting the proceedings which were had in the United States Dis-

trict Court on the 16th and 17th of February, 1903, with respect to the said explanation and arguments made by this defendant and respondent, and was under the impression that no order would be entered in respect thereto. But this defendant and respondent says that an order was entered, a fact which he learned several days afterwards, which order is as follows:

"This cause coming on now to be heard upon the petition of Frederick D. Connor, filed herein on the 16th day of February, A. D. 1903, for the instructions of the Court concerning the property and assets of said M. Zier & Company, which are now in the possession of the New Albany Trust Company, as Receiver of the Floyd Circuit Court, in a suit therein pending against said M. Zier & Company, because of their insolvency; and the petitioning creditors in this cause and said Connor, Receiver, as aforesaid, being now present and represented by George H. Hester and William Wilhartz, their solicitors, and said New Albany Trust Company, Receiver as aforesaid, being now present and represented by Henry E. Jewett, its Vice President, and by William W. Watts, its solicitor, and after argument by counsel, the said New Albany Trust Company, as Receiver of the Floyd Circuit Court, by its said Vice President, having voluntarily offered and agreed by and with the consent of approval of said William W. Watts, its solicitor, in open Court, to surrender full and immediate possession and control of the property and assets of said M. Zier & Company, in its possession or under its control, as Receiver of the Floyd Circuit Court, to said Connor, as Receiver of this Court, upon the presentation by him to said New Albany Trust Company of a certified copy of the order of his appointment as such Receiver heretofore made by this Court.

"It is now hereby ordered by the Court that said Connor, Receiver as aforesaid, forthwith present a certified copy of the order of his appointment as such Receiver to the said New Albany Trust Company, and immediately thereupon take full possession and

control of the property and assets of said M. Zier & Company, that are now in possession or under control of said New Albany Trust Company as Receiver of the Floyd Circuit Court."

On the 19th day of February, 1903, this defendant and respondent and the New Albany Trust Company, Receiver, appeared before the Judge of said Floyd Circuit Court at New Albany in Chambers, for the purpose of formally reporting to him the result of their appearance before the United States District Court at Indianapolis on the 16th and 17th days of February. This defendant and respondent as attorney for the New Albany Trust Company, then filed before the said Judge of said Floyd Circuit Court a written petition and motion which was signed by him as attorney as follows, to-wit:

"*To the Honorable Judge of the Floyd Circuit Court in Chambers:*

"Respectfully represents the New Albany Trust Company, Receiver herein and W. W. Watts, one of its attorneys herein, that pursuant to the order of the Court herein entered on Saturday February 14, 1903, they on the 16th day of February, 1903, at Indianapolis, Ind., filed before the District Court of the United States for the District of Indiana, A. B. Anderson, Judge, presiding, a statement of the New Albany Trust Co., Receiver, under the order of this Court setting forth the facts by protestation and limited appearance only and showing to said Court the reasons for a modification of its order theretofore entered appointing a receiver granting an injunction and restraining order and directing its Receiver to take possession of the assets of M. Zier & Co.

This Receiver and said attorney say they have made diligent effort to carry out the orders of this Court with respect to those matters, but the order of said Court remains as it was and they now move the Court to strike and expunge from the files herein the petition of this Receiver filed herein on the 14th day of February, 1903, and the order entered thereon."

Upon the aforesaid appearance made by this defendant and said Henry E. Jewett, Vice President of the said New Albany Trust Company on the 16th and 17th days of February, 1903, before the United States District Court at Indianapolis the Judge of said Court seemed to feel that the petition for advice which the said New Albany Trust Company, Receiver by this defendant and respondent as its attorney filed in the Floyd Circuit Court on the 14th day of February, 1903, was in some way offensive to him, the said Judge of the District Court of the United States, and for this reason, this defendant and respondent sought by said petition and statement filed before the Judge of said Floyd Circuit Court to have leave to strike out and expunge the said petition and withdraw it from the files. This defendant and respondent was in every way in good faith endeavoring to carry out the understanding which was had between him and Henry E. Jewett as Vice President of the New Albany Trust Company, receiver, and the Judge of the District Court of the United States for the District of Indiana. This defendant and respondent did advise and continue to advise, and at no time gave any contrary advice that the said New Albany Trust Company, as Receiver of the Floyd Circuit Court should turn over to Frederic D. Connor, Receiver of the United States District Court in such bankrupt proceedings, all of the property, assets and effects of M. Zier & Company, alleged bankrupts, and for this purpose said petition and statement was filed by this defendant and respondent as attorney for the New Albany Trust Company, Receiver, and was signed by him as such attorney on the 19th day of February, 1903, before the Judge of the said Floyd Circuit Court. This defendant and respondent was much embarrassed by the condition of affairs, and felt that the Judge of said Floyd Circuit Court might misconstrue

his action in the premises, and before going to New Albany on the 19th of February, 1903, he sought Mr. David A. Sachs, who is a lawyer residing in Louisville, Ky., and who is a friend of this defendant and respondent and asked him to go to New Albany with him for the purpose of appearing for this defendant and respondent before the Judge of the Floyd Circuit Court and explaining the action of this defendant in agreeing to advise the New Albany Trust Company, Receiver, to turn over the said property to Frederic D. Connor, Receiver. The said Sachs did go with this defendant and respondent to New Albany and was present when the said petition and statement was filed before the Judge of the Circuit Court of Floyd County on that day, and the said Sachs did undertake to explain the situation and to satisfy the said Judge. After filing the said petition and on the same day, to-wit, on the 19th day of February, 1903, the said Judge of the said Floyd Circuit Court made and entered the following order upon said petition and statement, to-wit:

> "And the Judge after considering said statement refuses to concur therein, but orders that the matters and facts therein stated show that said W. W. Watts has been guilty of a contempt of Court, and it is now ordered that a rule be issued against the said W. W. Watts, to appear before the said Judge on the 21st day of February, 1903, at 3 o'clock p. m. and show cause, if any he has, why he should not be punished for contempt."

On the same day, to-wit, February 19th, 1903, the New Albany Trust Company by Henry E. Jewett, Vice President, filed before the Judge of said Floyd Circuit Court its other and separate petition, which is as follows:

> "The New Albany Trust Company, Receiver in the above entitled cause, respectfully shows to the Court

that in pursuance of the order heretofore made by this Court it appeared by limited appearance and protestation only as ordered by this court before Judge A. B. Anderson, of Indianapolis, Judge of the United States District Court for the District of Indiana, on Monday the 16th day of February, 1903, and that upon the hearing in that Court this receiver stated to the Honorable Judge of said United States District Court that it was ready and willing to turn over to the Receiver appointed by the Honorable Federal Court in bankruptcy proceedings, of M. Zier & Company, then pending in said Court the property and assets of said M. Zier & Company in the hands of this Receiver, and this Receiver further states that it has not yet been able to make up its accounts as Receiver as to the receipts and disbursements, but that it is now preparing the same to be submitted to this Court: But that it is ready to turn over to Frederic D. Connor, the Receiver appointed by the United States District Court in bankruptcy all of the property of the said M. Zier & Company; and this receiver now prays for an order of this Court authorizing it to turn over to said Frederic D. Connor, the property and assets of said M. Zier & Company, now in its hands together with any balance in cash which may remain after such statement of its accounts shall be made up and presented and that upon delivering said property to said Frederic D. Connor, Receiver aforesaid, it be discharged from all further liability for or on account of said property or assets of said M. Zier & Company so turned over to such Connor as such receiver.

"This receiver further asks that upon making up and presentation of its accounts for allowances to this Court, that it be allowed to resign as Receiver of the said M. Zier & Company, and that upon the approval of its accounts its said resignation be accepted by this Court, and that it be fully and finally discharged as such Receiver."

"All of which is respectfully submitted.

THE NEW ALBANY TRUST COMPANY,
By Henry E. Jewett,
Vice President.

And afterwards, to-wit, on the same day the Judge of said Court upon said petition and statement made the following order:

"And the Judge after reading said tender of resignation holds that the matters therein set forth show that said Receiver is in contempt of Court, and the Judge orders that a rule issue at once against said Receiver to appear before the undersigned Judge on the 21st day of February, 1903, at 3 o'clock p. m. and show cause, if any it has or can, why it should not be punished for contempt of Court."

And on the 19th day of February, 1903, after the said New Albany Trust Company had filed its petition and statement and offer of resignation, and asked leave to resign, before the Judge of the said Floyd Circuit Court, the said New Albany Trust Company, addressed to Frederic D. Connor, Receiver for the United States District Court, for the District of Indiana, the following letter, to wit:

"FRED. D. CONNOR,

Receiver, U. S. District Court,

District of Indiana.

In view of your demand that as Receiver of the Floyd Circuit Court we deliver you the property of M. Zier and Company, as such receiver will state.

We, this morning, filed before the Judge of the Floyd Circuit Court, in Chambers, report, a copy of which is attached hereto. Thereupon the Judge stated orally that he wanted us to hold the property until our accounts as Receiver were rendered and passed upon. We think this might be done to-morrow, and if you are willing to defer action until then, it will relieve us of embarrassment in the premises.

On the other hand, if you insist on immediate surrender of the property to you, we are bound to say that we believe

that to carry out in good faith the understanding with the Honorable Judge of the United States District Court of Indianapolis and our Vice-President, H. E. Jewett, we ought to surrender the property to you at once.

Very truly yours,
THE NEW ALBANY TRUST COMPANY,
By H. E. Jewett,
Vice-Pres't.

February 19th, 1903."

On the same day and after receipt by said Frederic D. Connor of said communication, he expressed to the New Albany Trust Company, Receiver, his unwillingness to delay the delivery of said property to him, and thereupon on said day the said property was delivered to him by the said New Albany Trust Company, Receiver.

On the following day, namely, February 20th, 1903, this defendant and respondent did appear before the Judge of the said Floyd Circuit Court, because the said Judge had by telephone on the evening before requested his presence, and in pursuance of this request and in obedience thereto, the defendant and respondent appeared. On that day an order was entered removing the New Albany Trust Company as Receiver of the Floyd Circuit Court in the said action, and appointing Charles D. Kelso as Receiver in its stead, and directing the said Kelso as Receiver to demand of the said New Albany Trust Company and of Frederic D. Connor the immediate possession of the property of M. Zier & Company, which came into the hands of said New Albany Trust Company, as Receiver in the action and requiring the said Kelso, Receiver, if the said New Albany Trust Company, or said Frederic D. Connor, should fail or refuse to immediately turn over or surrender possession of said assets and property

to said Kelso, Receiver, to report that fact to the Judge of the Court. Before entering this order, the New Albany Trust Company had actually, under the advice of this defendant and respondent turned over said property to Frederic D. Connor, Receiver of the United States District Court, for the District of Indiana in said Bankrupt proceedings, as above stated. This respondent did not advise, aid, connive at or abet the making or the entry of said order of the Judge of said Floyd Circuit Court removing the New Albany Trust Company, Receiver, and appointing Charles D. Kelso, as Receiver, and had nothing whatsoever to do with it.

On the 20th day of February, 1903, after the entry of said order appointing him Receiver in the stead of the New Albany Trust Company, Charles D. Kelso filed a written report before the Judge of said Floyd Circuit Court in which it was stated that he demanded of the New Albany Trust Company possession of all the property and assets of said M. Zier & Co. which came into its hands as Receiver of said M. Zier & Co. and that said New Albany Trust Company failed and refused to surrender the possession thereof for the reason as stated by it that it had turned over the plant of M. Zier & Co. located on Pearl and Oak Streets in the City of New Albany to Frederic D. Connor, and that as to the other assets of said M. Zier & Co. in its hands it intended to account forthwith to the Honorable Judge of the Floyd Circuit Court.

And afterwards on the same day upon consideration of said report, the Judge of the said Floyd Circuit Court entered an order directing the issuance of a summary writ directed to the Sheriff of Floyd County, requiring the said Sheriff to immediately seize and take into his possession and deliver over to said Charles D. Kelso, Receiver of M.

Zier & Co., all the property of said M. Zier & Co., which said Frederic D. Connor had in his possession, which property was described in said order. This defendant and respondent did not procure the entry of said order or connive at its entry or advise its entry, and did not know of its entry until after it had been entered. He had no connection whatever with it.

This defendant and respondent is informed that upon said last named order a writ was issued by the Clerk of said Floyd Circuit Court and placed in the hands of the Sheriff of said Floyd County, and that the same was executed and the property taken from the possession of Frederic D. Connor and given into the possession of Charles D. Kelso, Receiver. But this defendant and respondent did not advise said writ to be issued or connive at its issuance, and did not know of its issuance until after it had been issued and served. He had no connection whatever with it.

This defendant and respondent further says that after his appearance before the United States District Court at Indianapolis on the 16th and 17th days of February, 1903, all of his acts and doings and advice were with the single purpose of having the New Albany Trust Company at once turn over all of the property and effects of M. Zier & Company to Frederic D. Connor, Receiver of the said United States District Court in said bankrupt proceedings; and he did nothing, and said nothing and advised nothing which would in any way or to any extent obstruct or delay the execution of that purpose. He did nothing and said nothing and advised nothing with reference to the removal of the New Albany Trust Company as Receiver and the appointment of Charles D. Kelso as Receiver. He in no way nor to any extent directly or remotely or contingently did anything or advised anything looking to the retaking of said

property from the hands of said Frederic D. Connor, Receiver, and with reference to all of these things he had nothing whatsoever to do.

This defendant and respondent files herewith as part of this response marked "A" a full and complete copy and transcript of the record of said action of Joseph T. Ryerson & Son vs. M. Zier & Co., pending in the Floyd County Indiana Circuit Court, duly certified under the Act of Congress as the same now remains and appears of record in the office of the Clerk of the said Circuit Court as of date March 4th, 1903.

He also files as part of this his response a complete transcript of the record in the matter of M. Zier & Co., alleged bankrupt, No. 37, in the District Court of the United States, for the District of Indiana at New Albany, Indiana, duly certified by the Clerk of said court as the sa ne appears upon the files and records in said office on the 3rd day of March, 1903, which is marked "B."

And having fully responded and holding himself in readiness to make any further or other response which this Honorable Court may require, he prays that the rule as to him be discharged and the information as to him dismissed.

BERNARD FLEXNER,
DAVID W. FAIRLEIGH,
Counsel for Respondent.

W.W.Watts, on oath says that the statements of the foregoing response are true as he believes.

W. W. WATTS.

Subscribed and sworn to before me by W. W. Watts this 7th day of March, 1903.

NOBLE C. BUTLER,
Clerk.

UNITED STATES OF AMERICA,
District of Indiana. } *ss.*

I, Noble C. Butler, Clerk of the District Court of the United States within and for said District, do hereby certify that the above and foregoing is a full and true copy of the separate response and pleas of William W. Watts, in the case of the United States against Charles D. Kelso and others, filed in my office on the 9th day of March, 1903, as fully as the same appears upon the files now in my custody.

WITNESS my hand and the seal of said Court at Indianapolis in said District, this 11th day of March, 1903.

NOBLE C. BUTLER,
Clerk.

[SEAL.]

And at the same time comes the defendant D. A. Sachs in person and by his attorneys, W. H. H. Miller and William M. Smith, and files his response herein, in the words and figures following, to-wit:

UNITED STATES DISTRICT COURT,
FOR THE DISTRICT OF INDIANA.

In the matter of
M. Zier & Company,
Alleged bankrupt. } No. 37 in Bankruptcy.

United States
vs.
Charles D. Kelso and D. A. Sachs and others.

SEPARATE RESPONSE AND PLEAS OF D. A. SACHS TO THE RULE AND INFORMATION HEREIN.

Your respondent and defendant herein, D. A. Sachs, denies that he committed any act or advised or consented

to the commission of any act in disobedience of any order of the District Court of the United States for the District of Indiana entered or made by said Court in the matter of M. Zier & Company, bankrupts, case No. 37, pending in said Court at New Albany, Indiana, and he deines that he in any way either directly or indirectly, aided, abetted or advised the taking from Frederick D. Connor, the receiver of this Honorable Court in said action stated any property, goods or chattels of M. Zier & Company, bankrupts, or alleged bankrupts, or that he did in any way withhold or aid, abet or advise the withholding of any such property, goods or chattels, or that he in any way disregarded or disobeyed or aided, abetted or advised the disregarding or disobeying the orders or decrees of said Court or that he had been guilty of any contempt in said case.

He says that on February the eighteenth, 1903, he first learned of the bankrupt and State Court proceedings in regard to said matter stated, and that from Honorable W. W. Watts, who represented to respondent that there had some complication arisen as to the jurisdiction of the Floyd Circuit Court and this Honorable Court, and that the Judge of the Floyd Circuit Court was complaining in regard to the action of said Watts in this Honorable Court, and he, Watts, desired this respondent to appear as his friend and attorney in the said Floyd Circuit Court and relieve him if possible of any reflection made upon him by said Court or seeming contempt by reason of his said action in this Honorable Court and that this respondent did appear before said Judge and attempted to explain the matter as far as said Watts was concerned, but that he at no time advised the disobedience or disregard of the orders of this Honorable Court or the taking of said goods, property or chattels, from said Connor nor did he know that the same was in-

tended to be done until after it had been accomplished, but on the contrary, he advised against such course. He says that all he did in this matter was without fee or any consideration whatever except through friendship to said Watts.

He says that at present he is unable to say positively as the same is matter of law as to the correctness of the proceedings herein or the right of this Honorable Court to take the property from the receiver of the Floyd Court as he finds some conflict of authorities in regard to said matter, but he then believed and is still of the opinion and is advised by Counsel and does state that the receiver of the said Floyd Court had the rightful possession of said property and that this Honorable Court did not have the right or authority to interfere therewith in the summary way pursued herein.

But however this matter may be he gave no advice in regard thereto but simply acted as he has stated, advising however, that under the circumstances in this particular case, it was better not to interfere with the property in the hands of said Connor, receiver, and he fully believed that that course would pe pursued until he learned the fact of the taking of said property as stated.

3. This defendant and respondent further states that on the 30th day of December, 1902, Joseph T. Ryerson & Son filed their certain complaint in the Floyd Circuit Court of the State of Indiana against M. Zier & Co., defendant, and on the same day caused to be isused by the Clerk of said Floyd Circuit Court, and there was duly issued by the said Clerk a summons upon the said complaint against M. Zier & Co., which said summons on the same day of its issuance came duly to the hands of the Sheriff of Floyd County, Indiana, and was by him on the same day served on the defendant, M. Zier & Co. The said complaint of Joseph T. Ryer-

son & Son, against M. Zier & Co. so filed in the Floyd Circuit Court averred an indebtedness of $15,000 of the defendant, M. Zier & Co., to the plaintiff, Joseph T. Ryerson & Son, upon certain promissory notes stated in the complaint, and the said complaint prayed judgment in favor of said plaintiffs against said defendant in said sum of money.

The said complaint averred these further facts, that the defendant, M. Zier & Co., is a corporation duly created and organized under the laws of the State of Indiana, and authorized to and was carrying on as such corporation the business of manufacturing boilers in the City of New Albany, in the County of Floyd and State of Indiana; that the said business was a large business; that the said defendant was indebted in the aggregate to divers persons in at least the sum of $65,000; less that it was unable to meet its said obligations; that its creditors were threatening to enter suits against it; that the property and assets of said defendant corporation consisted of a manufacturing plant, which was in opertaion, and which was employed in filling unfinished orders, and working on unfinished contracts; that the defendant was without means or money with which to continue the operation of its said business, and that if suits should be instituted against it, and its property seized upon executions or attachments, the assets and property of the defendant would be dissipated and its plant rendered much less valuable to its creditors generally than if the said property were properly preserved and continued as a going concern; and that the property, funds and profits of the business of the said defendant were in danger of being lost and materially injured and destroyed; unless a receiver were immediately appointed to take charge of said property and hold the custody and possession thereof, and preserve the same for such disposition thereof as the Court might adjudge.

The said Floyd Circuit Court of the State of Indiana and the Judge thereof in vacation were and are by the Statutes and Laws of the State of Indiana authorized and empowered to appoint receivers of and for insolvent corporations and their property and assets; that the said Floyd Circuit Court is a constitutional Court, and the judge thereof a constitutional officer, made such by the Constitution of the State of Indiana, and the said Floyd Circuit Court is by the Constitution and laws of the State of Indiana a Court of general, original jurisdiction.

On the same day on which said complaint was as aforesaid filed in the Floyd Circuit Court, and after it was filed and after the issuance of summons thereon, the plaintiffs in said action of Joseph T. Ryerson & Son, after due notice thereon to the defendant, M. Zier & Co., moved the Hon. William C. Utz, who was and is the duly elected, commissioned, qualified and acting judge of the said Floyd Circuit Court, to appoint a Receiver of the property and assets of the defendant, M. Zier & Co., in pursuance of the prayer of the said complaint.

The said defendant, M. Zier & Co., appeared to said motion and after due consideration thereof, the said Judge sustained said motion, and appointed by his order, duly made and entered, the New Albany Trust Company a Receiver of the said defendant, M. Zier & Co., and of all of its assets and property. The said New Albany Trust Company is a corporation created and organized under the laws of the State of Indiana with full corporate power among other things to act as Receiver under the appointment of Courts. That the said New Albany Trust Company immediately upon its said appointment duly qualified as such Receiver, and then and there took upon itself the duties of said Receivership, and took the oath as required by law and by said order of appointment.

That immediately after its said appointment and qualification as Receiver aforesaid, and on the same day on which it was appointed as such Receiver, and under the order of the said Floyd Circuit Court, the said New Albany Trust Company, as such Receiver, took into its possession all of the said property and assets of the said defendant, M. Zier & Co.

That after its said appointment, the said Receiver, made out an inventory of the property of the said M. Zier & Co., which it had taken possession of under its said appointment as such Receiver on the 30th day of December, 1902, and caused the same to be appraised, which inventory and appraisement were filed in the said Floyd Circuit Court in said action, and said inventory shows, and it is true that the appraised value of said property was about $28,500. That on the 16th day of January, 1903, the said Receiver filed in the Floyd Circuit Court its report and petition wherein it sought the advice and instruction of said Court with respect to the continuance of the operation of said plant and prayed the Court that a time be fixed for the hearing of said report and petition, and further prayed that said M. Zier & Co. and its officers, and the creditors of said M. Zier & Co. be notified by mail and by publication of the time and place of the hearing of said report and petition, and that the said creditors be requested to appear and make known their objections, if any, to the continuance of the operation of the plant of the said M. Zier & Co.

Said petition further prayed that all creditors of M. Zier & Co. be required to prove their claims against said estate by filing proof thereof with the said Receiver, or by intervening petition in said case, and that all creditors and persons be restrained and enjoined from prosecuting suits involving said assets in any manner except by intervening petition in said action.

And thereupon upon consideration of said petition, the Floyd Circuit Court made a certain order on the 16th day of January, 1903, directing said Receiver to continue the operations of the said business of the said M. Zier & Co. and to carry out certain contracts for manufacturing boilers and appliances, which were stated in said order, and further directed that a hearing be had of the creditors of the said M. Zier & Co. on the 24th day of January, 1903.

On the 24th day of January, 1903, the time fixed for the hearing of the said creditors of the said defendant, it was made to appear to the said Court by the said Receiver that all of the creditors of the said M. Zier & Co., as shown by the books of the said M. Zier & Co., had been notified by the said Receiver to be present on said 24th day of January, 1903, to be heard on said matters, and on said day a large majority in number and amounts of the creditors of the said M. Zier & Company appeared in said Court, among whom was the Inland Steel Company, and were heard upon the said petition of said Receiver, and thereby they became and were and are parties to said action; and after said hearing, and the Court being sufficiently advised, the said Court ordered and directed that the said Receiver carry out and complete all unfinished contracts of the said defendant, M. Zier & Co., and the said Court gave to said Receiver power and authority to purchase new material for this purpose, but ordered said Receiver not to make any new contracts, and gave to said Receiver divers other orders and directions, and further ordered that all creditors and other persons be enjoined and restrained from prosecuting any claims or suits against said estate in the hands of said Receiver except by intervening in said cause, or by first obtaining leave of said Court in said action.

The respondent and defendant further states that on the 6th day of February, 1903, the Inland Steel Company, a

creditor who had appeared, and was a party to said action, in said Floyd Circuit Court, and John C. Thurston and John Dey, doing business as the Dey Time Register Company, filed their certain petition in involuntary bankruptcy in the District Court of the United States for the District of Indiana against M. Zier & Co., alleging certain acts of bankruptcy committed by M. Zier & Co., and praying that the said M. Zier & Co. be adjudged a bankrupt. The said petition in bankruptcy further alleged: "That under certain proceedings in a State Court, a Receiver has been appointed of the assets of said corporation, M. Zier & Co., and is attempting to collect assets of said estate and incurring petty expenses in and about said estate which must be borne by the creditors thereof, and your petitioners aver that it is absolutely necessary for the preservation of said estate of M. Zier & Co. for the benefit of all of its creditors that a Receiver in bankruptcy be appointed herein forthwith."

On the 11th day of February, 1903, the said Inland Steel Company filed in said proceedings in bankruptcy its certain petition in which it stated among other things "That at the instance of said Joseph T. Ryerson & Son, a Receiver has been appointed by the Floyd Circuit Court of Floyd County, Indiana, to take charge of the assets of said alleged bankrupt; that the New Albany Trust Company is the Receiver so appointed, and that Harry E. Jewett who is the attorney for said M. Zier & Co. is also the Vice-President of said New Albany Trust Company; that said Receiver is now running the business of M. Zier & Co. and is completing certain contracts and for that purpose has employed a large number of men in the manufacturing establishment of said M. Zier & Company and has placed in charge of said plant one Michael Zier who is the Vice-President and Treasurer of said alleged bankrupt; that said Michael Zier is wholly

incompetent for said business; that he is wholly unfamiliar with book-keeping and necessary office work which is essential to the safe conduct of said business, and your petitioner avers if said Receiver is permitted to remain in charge that it would result to the injury and detriment of such of the general creditors of said M. Zier & Co. who are entitled to participate in said bankrupt estate.

"Your petitioner further states that W. W. and J. R. Watts, attorneys at Louisville, Ky., are the attorneys for said Joseph T. Ryerson & Son in said proceedings wherein the said New Albany Trust Company was appointed Receiver and that said W. W. and J. R. Watts are also attorneys for said Receiver, and your petitioner fears that said Receiver is friendly to said Joseph T. Ryerson & Son and said alleged bankrupt to the detriment of the creditors at large of said alleged bankrupt.

"Your petitioner further alleges that it is absolutely necessary for the preservation of said estate for the benefit of all the creditors who shall be entitled to participate therein that a Receiver in bankruptcy be appointed herein forthwith to take charge of all the assets of said alleged bankrupt and administer the same under the directions of this Honorable Court with the usual powers of Receivers in such cases.

"Wherefore your petitioner prays that a Receiver in bankruptcy be appointed forthwith and that such other and further orders be entered herein as to your Honor shall seem meet and proper."

And upon the same day, to-wit, on the 11th day of February, 1903, the said District Court of the United States for the District of Indiana in said bankrupt proceedings, upon consideration of said petition filed by the Inland Steel Company entered and made an order directing among other things as follows, to-wit:

"It is therefore considered and ordered by the Court that Frederick D. Connor be and he is hereby appointed as Receiver herein of the property of said M. Zier & Co. with authority to take charge and possession of all of the same and particularly the goods, wares and merchandise, books, papers and effects of or belonging to said M. Zier & Co. located at the City of New Albany, Floyd County, Indiana, and now in the hands of the New Albany Trust Company, as Receiver of said M. Zier & Co. appointed by the Floyd Circuit Court of Floyd County, Indiana. Said Receiver is ordered and directed to take into his possession the sheet iron and boiler manufacturing plant in said City of New Albany, together with all the tools, machinery, appliances, materials and finished products within and about said plant at said City of New Albany, which said plant is located at the corner of Pearl and Oak Streets in said City and all other property of said M. Zier & Comyany wheresoever found and situated.

It is further ordered and adjudged by the Court that the New Albany Trust Company be and it is hereby required to deliver up to said Frederick D. Connor as Receiver all the said property and effects of said M. Zier & Company now in its possession, and to refrain hereafter from interfering in any way with the said Receiver's possession and control of the same."

And Frederic D. Connor duly accepted said appointment as the Receiver of the District Court of the United States for the District of Indiana in said bankruptcy proceedings and duly qualified and executed bond as such as is required in the said order of appointment.

On the 13th day of February, 1903, Frederic D. Connor, as Receiver of the said United States District Court in said bankrupt proceedings, and acting under the order appoint-

ing him as such Receiver, as defendant and respondent was informed and believed, appeared at New Albany, Indiana, and demanded of the New Albany Trust Company that it deliver to him the assets and effects of M. Zier & Co. which it held and had in its possession as Receiver of said Floyd Circuit Court.

On the 14th day of February, 1903, the said Frederic D. Connor, as said Receiver of the United States District Court by George H. Hester, as his Attorney, appeared in the said Floyd Circuit Court in said action of Joseph T. Ryerson & Son against M. Zier & Co. and filed his verified petition therein showing his appointment as such Receiver by order of the United States District Court of the District of Indiana, and praying said Floyd Circuit Court for an order requiring the said New Albany Trust Company, as Receiver of said M. Zier & Co. to turn over and surrender to him, the said Frederic D. Connor, as receiver in Bankruptcy the property of the said M. Zier & Co. of which the said New Albany Trust Company as Receiver of M. Zier & Co. under the orders of the said Floyd Circuit Court was custodian, and thereupon said Frederic D. Connor as such Receiver was made a party to said suit and the matter of said petition was continued until the next term of said Floyd Circuit Court.

This respondent further says that after he was called into this matter, viz: Monday, February 23, 1903, he learned for the first time of the making of the order in this Honorable Court as follows, viz:

"This cause coming on now to be heard upon the petition of Frederick D. Connor, filed herein on the 16th day of February, A. D. 1903, for the instructions of the Court concerning the property and assets of said M. Zier & Company, which are now in the possession of the New Albany Trust Company, as Receiver of the Floyd Circuit Court, in a suit

therein pending against said M. Zier & Company, because of their insolvency; and the petitioning creditors in this cause and said Connor, Receiver as aforesaid, being now present and represented by George H. Hester and William Wilhartz, their Solicitors and said New Albany Trust Company, Receiver as aforesaid, being now present and represented by Henry E. Jewett, its Vice President, and by William W. Watts, its Solicitor, and after argument by counsel, the said New Albany Trust Company, as Receiver of the Floyd Circuit Court, by its said Vice President, having voluntarily offered and agreed by and with the consent and approval of said William W. Watts, it Solicitor, in open Court, to surrender, full and immediate possession and control of the property and assets of said M. Zier & Company, in its possession or under its control, as Receiver of the Floyd Circuit Court, to said Connor, as Receiver of this Court, upon the presentation by him to said New Albany Trust Company of a certified copy of the order of his appointment as such Receiver heretofore made by this Court.

It is now hereby ordered by the Court that said Connor Receiver as aforesaid, forthwith present a certified copy of the order of his appointment as such Receiver to the said New Albany Trust Company, and immediately thereupon the full possession and control of the property and assets of said M. Zier & Company, that are now in possession or under control of said New Albany Trust Company as Receiver of the Floyd Circuit Court.

This respondent further shows to the Court that on the 19th day of February, 1903, W. W. Watts, and the New Albany Trust Company, as affiant is informed and believes appeared before the Honorable Judge of the Circuit Court of the County of Floyd and by report of petition showed to said Court that this Honorable Court was insisting that it

had sole jurisdiction of the affairs of said bankrupt and the right summarily to take possession of all the property in the hands of the Receiver of said Floyd Circuit Court, under the proceedings above referred to, but the said Judge of the Floyd Circuit Court refused to concur in that conclusion and insisted that his jurisdiction was prior and superior to that of this Court and thereupon threatened proceedings for contempt against said Watts and threatened to punish him for alleged actions in violation of the orders of that Court in the premises; that it was solely, as hereinbefore stated, by reason of the complications in which Mr. Watts found himself by reason of the conflicting views of said two Courts; that this respondent had anything to do with said proceedings and he avers that his action in the premises and the only advice and only action that he took was with a view to assisting and extricating Mr. Watts from said complications and with a view to allaying the irritation and avoiding the unpleasant consequences that might result from a conflict in the premises, and with a view to avoiding any action that might be justly construed as a violation of the orders of either Court.

Affiant further says that he prepared no petition or order for the Judge of the Floyd Circuit Court to order said property to be seized; that he did not know that such a petition or order was to be prepared or was prepared until after the said petition or order had been presented and the order made; that said petition was presented or the order was made at night after affiant had gone home to his home in Louisville, as he is informed, and was without his knowledge, cognizance or consent; that he had nothing whatever to do in any way with the procuring or the execution of said order or with the taking of said property or any part thereof from said Connor, Receiver.

And this respondent for the further information of this Court begs leave to refer to a transcript of the proceedings of the Floyd Circuit Court or the Judge thereof, which is filed as Exhibit "A," with the response of the said W. W. Watts in this matter, and prays that the same may be considered as a part of this, his response, solely for the purpose of showing what action was taken in said Floyd Circuit Court, and having fully answered the premises this respondent prays that he be hence discharged with his costs.

D. A. SACHS.

W. H. H. MILLER,
W. M. SMITH,
Attorneys for Sachs.

Subscribed and sworn to before me this 9th day of March, 1903.

NOBLE C. BUTLER,
Clerk.

And thereupon the United States Attorney files his motion to reject and strike out parts of the response of the defendant William W. Watts, which motion is in the words following, to-wit:

(Motion not on file.)

And thereupon the United States Attorney files his reply to each response, which replies are respectively in the words following, to-wit:

Comes now the United States by Joseph B. Kealing, United States Attorney for the District of Indiana and by way of replication to the response of William Watts, denies each and every allegation contained therein except his denials.

JOSEPH B. KEALING,
U. S. Attorney.

Comes now the United States by Joseph B. Kealing, United States Attorney for the District of Indiana and by way of replication to the response of D. A. Sachs, denies each and every allegation contained therein except his denials.

JOSEPH B. KEALING,
U. S. Attorney.

And this cause is now submitted to the court for trial, finding and judgment; and the evidence being partially heard the court doth now adjourn until to-morrow morning.

And afterwards, to-wit, at the November Term of said Court, on the 10th day of March, 1903, before Honorable Albert B. Anderson, Judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now Joseph B. Kealing, Esq., United States Attorney and the defendants William W. Watts and D. A. Sachs in person and by their respective Attorneys come also, and the evidence having been further heard the court doth now adjourn until to-morrow morning.

And afterwards, to-wit, at the November Term of said court, on the 11th day of March, 1903, before Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now Joseph B. Kealing, Esq., United States Attorney, and the defendants William W. Watts and D. A. Sachs in person and by their respective Attorneys come also, and the evidence having been further heard the court doth now adjourn until to-morrow morning.

And afterwards, to-wit, at the November Term of said Court, on the 12th day of March, 1903, before Honorable Albert B. Anderson, Judge of said Court, the following

further proceedings in the above entitled cause were had, to-wit:

Comes now Joseph B. Kealing, Esq., United States Attorney, and the defendants William W. Watts and D. A. Sachs in person and by their respective Attorneys come also, and the evidence having been further heard the court doth now adjourn until to-morrow morning.

And afterwards, to-wit, at the November Term of said court, on the 13th day of March, 1903, before Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now Joseph B. Kealing, Esq., United States Attorney, and the defendants William W. Watts and D. A. Sachs in person and by their respective Attorneys also come, and the evidence and argument of counsel having been heard by the court, the court doth now take the same under advisement.

And afterwards, to-wit, at the November Term of said Court, on the 14th day of March, 1903, before Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now Joseph B. Kealing, Esq., United States Attorney, and the defendants William W. Watts and D. A. Sachs in person and by their respective Attorneys also come, and thereupon the court having considered the evidence and argument of counsel and being sufficiently advised in the premises doth find that said defendants are guilty of the contempt charged.

It is therefore considered by the court that said defendant William W. Watts, for the offence charged be imprisoned and confined in the jail of Marion County, Indiana, for the

term of sixty days, and that he do pay unto the United States the cost of this proceeding, taxed at $ . . . , and that he do stand committed until said costs are paid.

And it is further considered by the court that said defendant D. A. Sachs for the offence charged be imprisoned and confined in the jail of Marion County, Indiana, for the term of sixty days, and that he do pay unto the United States the cost of this proceeding, taxed at $ . . . , and that he do stand committed until said costs are paid.

Upon the rendition of the judgment herein, the following opinion was delivered by the court:

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE DISTRICT OF INDIANA.

Saturday, March 14, 1903.

HONORABLE A. B. ANDERSON, *District Judge*.

UNITED STATES,
vs.
David A. Sachs. } For Contempt of Court.

UNITED STATES,
vs.
William W. Watts. } For Contempt of Court.

ANDERSON, *District Judge*, orally:

Some time prior to the 29th day of December, 1902, a corporation located at New Albany, existing under the name of M. Zier and Company, became insolvent. By a series of fraudulent entries on the books, and by padding the pay rolls, M. Zier, the vice president and one of the largest stockholders of the corporation, had stolen from the funds of that corporation $9,600. About the 29th day of Decem-

ber, 1902, he paid this $9,600. over to one Charles L. Jewett, an attorney at New Albany, who, with his brother, H. E. Jewett, composed the firm of attorneys of Jewett and Jewett, of that city. Of this money $600. was paid over to Charles L. Jewett as attorney's fees, for services to be rendered to the M. Zier and Company corporation in effecting a settlement of some kind with its creditors. The $9,600 was paid over to Charles L. Jewett to be paid by him to the agent of Minnie Zier, a large stockholder in the corporation, and a sister-in-law of M. Zier.

This money was paid to Charles L. Jewett under such circumstances that this court believes that at the time it was paid over to him he knew the manner in which the money was abstracted from the treasury of this company, and knew the fraudulent purpose for which it was handed over to him.

On the 29th of December, 1902, or just a few days before that, Ryerson & Son of Chicago, a creditor of M. Zier and Company, received $3,100. of the funds of this corporation. On the 29th day of December, Charles L. Jewett went to the city of Chicago and took with him this $9,000. It must have been arranged beforehand that the agent of Minnie Zier, Mr. Meargel, who lives at Minneapolis, should meet him in Chicago.

It is indisputable that he paid that $9,000 to Mr. Meargel, in the city of Chicago, on the 29th day of December, 1902. At that time, and for some time prior thereto, Charles L. Jewett had been the attorney and counselor and adviser of M. Zier and Company, and especially of its managing vice president, Mr. M. Zier; knew all about its affairs, and, as attorney and confidential adviser of M. Zier and the corporation, he went to the City of Chicago, at the time he paid this $9,000 to the agent of Minnie Zier, as he himself testifies,

chiefly for the purpose of procuring the corporation, Ryerson and Son, to bring suit against M. Zier and Company in the Floyd Circuit Court, at New Albany, to have a receiver appointed and to wind up its affairs. While in Chicago he made that arrangement with Ryerson and Son. He called up his brother, Henry Jewett, over the long-distance telephone and told him of the arrangement. That night the agent of Ryerson and Son went to Louisville. The next morning Henry Jewett met with Watts and Watts, the attorneys of Ryerson and Son, and it was agreed between them that a suit should be immediately begun in the Floyd Circuit Court, that a receiver should be immediately appointed for all the assets and property of this insolvent corporation, and that the New Albany Trust Company, in which Henry E. Jewett, and Charles L. Jewett were both stockholders, and of which Henry E. Jewett was the vice president, should be the receiver. The suit was commenced on the afternoon of December 30, 1902. Summons was issued. Immediately M. Zier, in pursuance of this arrangement and understanding, with his attorney, Henry Jewett, appeared before the judge of that court, in chambers, and consented to the appointment, or agreed to the appointment of the New Albany Trust Company as receiver of the M. Zier and Company property.

It is said that this was a friendly suit. To the mind of this court it was a fraudulent proceeding. It was collusive. It was born in fraud, and the subsequent transactions down there show that it reeked with fraud from begininng to end. In my judgment that proceeding by which the New Albany Trust Company was made the receiver of M. Zier and Company, an insolvent corporation, was in substance a voluntary assignment in which the insolvent corporation selected the trustee, the purpose and scope of which was the distri-

bution of the assets of this insolvent and subsequently adjudicated bankrupt corporation, among its creditors. On the 16th day of January this receiver filed in the Floyd Circuit Court an inventory, and what has been here called a petition for instructions as how to manage the affairs of the receivership. Creditors, such as appeared to be so on the books of M. Zier and Company, were notified by mail to appear in the Floyd Circuit Court on the 24th day of January, at a creditors' meeting. This creditors' meeting was the most remarkable meeting of the kind that this court has ever heard of. It was held in the court-room, and it is said to have been presided over by the judge. It is claimed by those who were engineering the proceeding, that the purpose of it was to advise with those creditors as to the best methods upon which to administer this trust; and yet the evidence shows conclusively—there is no question about it—that this payment of $9,000 of money which was stolen from the treasury of this corporation was concealed from the creditors; that this payment of $3,100 to Ryerson and Son, just a few days before the beginning of that suit, was concealed from the creditors; and that the payment of $600 to Jewett and Jewett as attorneys' fees was concealed from the creditors.

After the creditors had consulted about the matter to some extent, and after most of them and their representatives had left the court-room, W. W. Watts, one of the defendants, here, drew up an order to be entered by the Floyd Circuit Court. That order was an effort in one sense to bind the creditors who were present at that meeting, but without the knowledge of any other creditor, and without the knowledge of any representative of any other creditor, and, at the procurement of the defendant, W. W. Watts, the court not only authorized the continuance of the business of the

corporation and the completion of certain contracts, but enjoined all creditors from proceeding in any other court or manner, except by intervention in that proceeding in that court. It was declared by Mr. Watts at that meeting that the purpose and object and scope of the proceedings in that court was to wind up the affairs of the M. Zier and Company, and to do this as near in conformity to the bankrupt law as possible.

On the 6th day of February, 1903, three creditors of the M. Zier and Company corporation, representing the necessary amount, the statutory amount of claims, filed a petition in bankruptcy in this court. On the 11th day of February, 1903, these same creditors filed in this court a petition asking this court to appoint a receiver for the alleged bankrupt, M. Zier and Company. As set forth in the petition, matters and facts were shown which at that time appeared to the court to imperatively demand the appointment of a receiver, and the subsequent developments in this case have conclusively shown that if this court had not appointed a receiver at that time, and used every effort to get that property into the possession of the officers of this court, it would have failed to do its duty.

On the 11th day of February, 1903, the court, after due deliberation, appointed as receiver of this court, Frederick D. Connor. He was ordered to take possession of the property of the corporation, M. Zier & Company, which company has since been adjudicated by this court to be bankrupt. The New Albany Trust Company was ordered to refrain from any interference with that property. Mr. Connor went to New Albany, filed a petition in the Floyd Circuit Court on Saturday, February 14th, the last day of the then term of that court, in which petition he set forth a certified copy of his appointment and the orders which were

made in connection therewith, and asked that court to order its receiver to turn the property over to him as receiver of the court. The judge of the Floyd Circuit Court ignored that petition, paid no attention to it whatever, neither granted it nor denied it, but contemptuously continued it to next term, which did not meet until three weeks thereafter. On February 16, 1903, W. W. Watts, the defendant here, having obtained authority, as he claimed from the judge of the Floyd Circuit Court to appear here for that purpose, together with Henry E. Jewett, the vice-president of the New Albany Trust Company, the receiver appointed by that court, appeared in this court They objected that this court had no power to appoint a receiver; that if it had the power to appoint a receiver that it had no power to take possession of the property of the alleged bankrupt by summary proceedings.

I stop here simply to state that the chief argument made by Mr. Watts at that time was that the receiver of the Floyd Circuit Court held by adverse possession. It was maintained upon that argument that this court had no right to take possession of this property out of the receiver of the Floyd Circuit Court because that court's receiver held adversely. Counsel for the defendants here who have argued the law questions before this court upon this hearing have distinctly disavowed this contention. Mr. Miller yesterday squarely stated that there was no question of adverse possession in this case.

After a full discussion of this matter before this court on the 16th and 17th days of February, 1903, Henry E. Jewett, as vice-president of the New Albany Trust Company, and W. W. Watts, Attorney for the New Albany Trust Company, receiver, and the attorney for the plaintiff in that suit—an attorney authorized, as he claimed, by

the judge of that court to represent the matter here—voluntarily, as the records of this court show, in open court, offered to turn this property over to the receiver of the United States Court. Both Mr. Henry Jewett, who is vice-president of the New Albany Trust Company, and a lawyer, and Mr. W. W. Watts, who is a lawyer, at that time conceded as Mr. Miller stated here yesterday, that the absolute right to the possession of this property was in this court. Thereupon these gentlemen, after having conceded, that the right to the possession of this property was in the receiver of this court, after voluntarily offering to turn this property over to the receiver of this court, returned to the city of New Albany.

Two days after, on Thursday morning, February 19th, in pursuance of that voluntary offer, the New Albany Trust Co npany, turned over to Frederick D. Connor, the receiver of this court, the property and plant of this bankrupt corporation. Mr. Connor took peaceable possession of that property as the receiver of this court, entered into possession, remained in possession, caring for it as he was bound under the law to do until Friday night, the 20th day of February, when, after dark, Charles D. Kelso, Ramond G. Morris, Claude Sittason and so ne others went to this plant and forcibly, in the night time, ejected the receiver of this court and took violent and forcible possession of that property. Thereupon the receiver having filed a written statement here of the facts, a citation was issued to these defendants, among others, to show cause why they should not be punished for a contempt of this court in interfering with the peaceable and lawful possession of the property of the bankrupt in the receiver of this court.

It has been argued here as though the question now before the court was whether or not this court has the power

by summary proceedings, or had the power at that time, by summary proceedings, to take the possession of that property away from the receiver of the state court and place it in the hands of the receiver of this court. As I shall show presently, that is not the question here at all. But so much has been said about the law in this case that I propose to now go briefly into that question and show that this court had the power, the unquestioned power, to issue a summary order wresting this property from the receiver of the state court, and placing it into the custody of the receiver of this court.

The constitution of the United States among other things say: "This constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding." I understand the word "supreme" in that clause to mean supreme—just what it says.

Another clause of this constitution gives Congress the power to enact uniform laws upon the subject of bankruptcy throughout the United States. It is familiar law that whenever Congress exercises any of powers granted to it by the federal constitution, that it occupies the field and that no state can thereafter enter that field. In this instance, Congress has occupied the field. It has passed a uniform law upon the subject of bankruptcy. And, under the constitution, the clause which I have just read, and the authority given to Congress to pass this law, upon these principles alone, it seems to me to be perfectly evident that whatever there may be in the state law or in the state proceedings which is antagonistic to the scope, effect and tenor of the bankrupt law must necessarily fall.

But that has not been left to construction. The courts have frequently passed upon the question. Much has been said about the rulings under the act of 1867. I shall pause here long enough to show what the courts held under that law.

In the National Bankruptcy Register, volume six, page forty-three, is a case decided by Judge Blodgett, formerly of this circuit. It is entitled, In re Merchants' Insurance Co. In this case creditors petitioned to have an insurance company declared a bankrupt. Prior to the filing of the petition, suit had been begun in a state court of Illinois to dissolve that corporation, and a receiver had been appointed in that suit prior to the institution of the proceedings in involuntary bankruptcy; and the question was whether or not the receiver appointed by the United States Court in bankruptcy was entitled to take the possession of the property and administer it notwithstanding the fact it was then in the possession of the receiver of the state court. Judge Blodgett, in the course of his decision, said: "The object and intent of the general bankrupt law is to place the administration of the affairs of insolvent persons and corporations *exclusively* under the jurisdiction of the federal courts of bankruptcy; and the enactment of the general bankruptcy law, now in force, suspended all actions and proceedings under state insolvent laws." In the complaint in the Floyd Circuit Court Ryerson and Son passed their right to the appointment of the receiver upon the sole ground that the corporation was insolvent. In the same case it is further said: "But it is objected that the proceedings in the state court here complained of, being in accordance with a general statute of this state and part of the organic law by which the respondent exists, and being predicated mainly upon the reserved right of the state to protect its citizens against

irresponsible insurance companies, and the state court having acquired jurisdiction of the parties and subject-matter, this court can not now interfere as a bankrupt court to take charge of and administer the assets in question, although the insolvency of the respondent is fully conceded. It seems enough to suggest in answer to this position, that, if correct, any state could effectually defeat the operation of any bankrupt law passed by congress by simply providing that any person or corporation if deemed insolvent or incapable of doing business by a state officer, might, under the power of exercising and enforcing police regulations or enactments by the states be wound up and its assets administered upon in the state courts notwithstanding such person or corporation might be insolvent and guilty of all the acts of bankruptcy provided for in the general bankrupt law."

And in the 11th National Bankruptcy Register in the case of John L. Watson v. The Citizens Saving Bank of South Carolina, in a decision by Judge Bond, it is held (11 N. B. R. 161): "The jurisdiction of the United States courts in bankruptcy is an exclusive jurisdiction, and although State courts have jurisdiction under their statutes to settle and arrange the affairs and distribute the assets of an insolvent corporation their jurisdiction is at an end the moment the corporation is adjudicated a bankrupt by the United States District Court." And in the opinion of the court, it is said: "We are of the opinion that the jurisdiction of the United States courts in bankruptcy is an exclusive jurisdiction. That although the state courts have jurisdiction, under their statutes, to settle and arrange the affairs and distribute the assets of an insolvent corporation, their jurisdiction is at end the moment the corporation is adjudicated a bankrupt by the District Court," "and in this respect we can see no difference between the proceedings of a state court

under a particular statute relating to insolvent corporations, and its proceedings under its general powers as a court of equity to wind up the affairs of an insolvent corporation."

The Federal courts, sitting as courts of bankruptcy, have repeatedly decided this question since the act of 1898 was passed.

In 90 Federal, 475, in the case of In re Gutwillig, decision by Judge Brown, District Judge in the southern district of New York, it is held: "Voluntary general assignments for the benefit of creditors made in conformity with the laws of the State of New York, though said laws are not treated as 'insolvent laws' within the meaning of the last paragraph of the act of 1898, are voidable by the trustee of the debtor in bankruptcy if made within four months of the adjudication, because incompatable with the purpose and policy of the bankrupt law, and the rights of creditors thereunder to the appointment of the trustee and the supervision of the assets of bankruptcy; because in fraud of creditors within section seventy of the act, as the assignment deprives creditors of the important advantages secured to them under the act of 1898; and because if not voidable, the clause of section 3, making such an assignment *ipso facto* 'an act of bankruptcy' would be practically nullified, and rendered of no use to creditors." And in this case the court cites the case which I will call attention to presently.

In the same volume, in the case of In re Bruss-Ritter Co., 90 Fed. 651, decision by Judge Seaman of this circuit, it is decided squarely that the bankruptcy act suspends the operation of state insolvency laws from the time of such enactment, and subject only to such limitations as may be prescribed in the bankruptcy act. The facts of this case are so similar to the case at bar that I want to read a little from this decision: "The petition by five creditors states a *prima*

facia cause within the provisions of the recent act of congress for an adjudication of involuntary bankruptcy against the Bruss-Ritter Company, as an insolvent corporation of Wisconsin. The petition was filed November 4, 1898, and on November 11, 1898, upon petition showing cause therefor, a receiver of the effects of said corporation was appointed by order of this court. The motion to dismiss is founded solely upon the contention that the bankruptcy act of July 1, 1898, having postponed the filing of any petition for involuntary bankruptcy until November 1, 1898, was inoperative in the case at bar, because an action was commenced in the Superior Court of Milwaukee County on October 27, 1898, founded on alleged insolvency and fraud, to take possession of the assets of the corporation for the same purposes involved in the bankruptcy proceedings, pursuant to provisions of the Wisconsin statute, which action was pending when this petition was filed, including an application for the appointment of a receiver. The power of congress to enact a general bankruptcy statute is secured by constitutional provision. In the absence of such congressional enactment, the states are free to provide for insolvency relief of limited extent, but when congress exercises its authority by a general enactment all state action is suspended from such time and subject only to such limitations as may be prescribed in the act. Tua vs. Carriere, 117 U. S. 201-209. As remarked in Platt vs. Archer, 9 Blackf. 559, Fed. cases No. 11213, this authority of congress 'is paramount and exclusive, and so is the jurisdiction of the district court thereunder.'" There is a case where a proceeding such as the one in the case at bar was begun in the state court. A receiver had been appointed by the state court. A receiver was then in possession, and the court held that the moment the petition was filed in bankruptcy, before the adjudication, pending the adjudication,

upon due application, the court on bankruptcy had the right to appoint a receiver and had the right to take the property from the state court. In that case the court further said: "There is no jurisdiction to administer in the state courts causes which are so clearly defined in this act, and no ground for applying the doctrine which prevails where jurisdiction is concurrent giving priority to that which is first obtained."

As I said, this has been repeatedly decided. In the case of In re Rouse, Hazard & Co., 91 Fed. 96, decision by Judge Jenkins, of the circuit court of Appeals, for this circuit, it is said: "The bankrupt act by its terms, went into full force and effect upon its passage, July 1, 1898, and, notwithstanding the provision that no voluntary petition should be filed within one month of the passage of the act, and that no petition for involuntary bankruptcy should be filed within four months of the passage of the act, the bankrupt law was operative from the date of its passage, and was effective from that date to supersede the insolvency laws of the several states. Manufacturing Co. vs. Hamilton (Mass.), 51 N. E. 529; Blake vs. Francis-Valentine Co., 89 Federal 691; In re Bruss-Ritter Co., 90 Fed 651."

In the same volume at page 237, in the case of Lea et al. vs. George M. West Co., the court holds the same doctrine and says: Coming to the consideration of what action should be taken by this court, where the state court has entered upon the administration of the trust estate by reason of the general assignment of the bankrupt, while every reasonable effort should be exerted to avoid even an apparent conflict of jurisdiction between state and federal courts, this case is apparently free from difficulty, as it will not be seriously maintained that the act of bankruptcy itself can be made the basis of dispossessing the bankrupt court of its juris-

diction. The constitution of the United States authorizes Congress, in its wisdom, to enact bankruptcy legislation, and when such action is taken it is the supreme law of the land on the subject. Under the recent act, the district courts of the United States alone are made courts of bankruptcy within the states, and are vested with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings. . . . The power of the bankrupt court in the premises is plenary, and under section 711, Rev. St. U. S., its jurisdiction in bankruptcy cases is superior to, and not concurrent with, the state courts."

In 92 Fed. on page 135, in the case of In re Smith et al. Judge Baker, the former judge of this district, held: That in the case of a voluntary assignment, where, the property was in the hands of the trustee under the deed, it was in *custodia legis*—in the custody of the court, under its control—"the administration of the debtor's estate so assigned is placed under the control and jurisdiction of the proper circuit court of the state." A motion was made in this court for a summary order to require the assignee to turn the property over to the receiver appointed by this court. And the court says: "The assignee under the inoperative state law takes no title, as against the creditors by the deed of assignment; and all of his acts touching the estate of the bankrupt, as well as all acts by the state court in the administration of the same, are unauthorized and void, and will be treated as nullities wherever drawn in question." The distinction was attempted here by one of the defendants while on the witness stand, between the jurisdiction of the person and the property of the bankrupt. He conceded that the Federal Court had jurisdiction of the person of the bankrupt, but claimed that it did not have jurisdiction of

the property. Judge Baker said: "No question of concurrent jurisdiction, or of the conflict of jurisdiction can possibly arise. The jurisdiction of the bankrupt court is supreme, it is exclusvie, and the acts of the state courts are unauthorized and void, because jurisdiction over the person and *estate* of the bankrupt is drawn to, and vested exclusively in, this court by the adjudication of bankruptcy."

In the same volume is the case of In re John A. Etheridge Furniture Company (92 Fed. 329), a case decided by Judge Barr, District Judge, the predecessor of Judge Evans, in the Louisville District. In this case W. W. Watts, one of the defendants here, appeared for the petitioning creditors and procured from Judge Barr a summary order—procured first the appointment of a receiver upon a petition in bankruptcy, and then procured a summary order requiring the assignee, I think it was, in a voluntary assignment proceeding, to forthwith turn that property over to the receiver of the Federal court. And in that decision, procured by this defendant Watts, the court said: "Subsection B of section 71, provides: 'proceedings commenced under said insolvent laws before the passage of this act shall not be affected by it.'" And the court proceeds: "This would clearly indicate that proceedings commenced after the passage of the bankrupt act can not be effectual to prevent the administration of the bankrupt estate in bankruptcy. To allow the bankrupt to select the trustee to administer upon his estate, instead of the creditor's, as provided in the bankrupt act, or to allow the state court to take jurisdiction of the estate of the bankrupt, and administer and distribute it, would effectually destroy the efficiency of any bankrupt act that might be enacted by congress, and thus effectually destroy the power granted to congress to pass a bankrupt act."

In 94 Federal, 633, in the case of *in re* Richard, decision by Judge Purnall, in the Eastern District of North Carolina, it is held:

> "Except as provided in the act, such as section 6, which provides that the passage of the act shall not affect the exemptions allowed where the bankrupt has his domicile, the state law is suspended and inoperative after an adjudication in bankruptcy. The bankrupt court takes jurisdiction *of the estate* and all matters pertaining thereto, and will administer the same to a final settlement."

In the case of Blake, Moffitt, and Towne v. Francis-Valentine Co., 89 Fed. 691, it is said:

> "But where the proceeding are involuntary the debtor is not, and can not be, adjudged a bankrupt until the return and hearing of the order to show cause, and will not then be adjudged a bankrupt if he has any good and sufficient defense."

In re Lady Bryan Ming. Co. (6 N. B. R. 262, Fed. Cas. No. 7980), where a creditor had filed a petition praying that the corporation might be adjudged a bankrupt, and at the same time obtained an injunction similar to the injunction in this case, the Court, upon motion to dismiss the injunction, held that the district court, as a court of bankruptcy, might, in the exercise of a lawful jurisdiction, restrain by injunction the sale of property under an execution issued from a State court before the commencement of proceedings in bankruptcy. In the course of the opinion, the Court said:

> "'Looking at the first section of the bankrupt act, it is difficult to imagine how a more unrestricted jurisdiction over matters in bankruptcy could have been granted. All the assets and all the parties in interest are to be brought before the court, priorities adjusted, liens ascer-

tained and liquidated, and the different funds and assets marshaled and distributed. The grant of these powers carries with it the right to employ such process, mode of procedure, and remedies as are indispensable to make the grant effectual. In this case the real estate levied on is assets and power to collect the assets is given. But this power is of no avail in this proceeding unless the court can preserve the assets until the question of bankruptcy is determined.'"

It was said upon the argument here, I may say, that the cases where summary proceedings have been authorized are cases in which there were voluntary assignments, where the assignment constituted an act of bankruptcy, but that no case can be found where the property was taken from a receiver of a state court. I have already cited several cases, one particularly by Judge Hodgett and one by Judge Seaman, in this circuit. In the case of *in re* Lengert Wagon Co., 110 Fed. 927, the court said:

"Certain judgments were entered against the Lengert Wagon Company in the Supreme Court of the State of New York and thereunder, on the 20th of September, 1901, property of the corporation was levied upon by the Sheriff of New York County under executions issued upon the judgments. Thereafter proceedings were instituted in the State Court by the directors of the corporation for a voluntary dissolution thereof on the ground of the insolvency of the corporation, and a temporary receiver of the property and effects of the corporation was appointed by an order of the court dated the 23d of September, 1901. On the 25th of September, 1901, involuntary proceedings against the corporation were commenced in this court. On the 27th of September, 1901, a receiver of the property of the bankrupt was appointed under section 2 (3) of the bankruptcy act, and an attempt made by him to obtain possession of the property. This was resisted by the receiver and sheriff in the State Court and the receiver in this court now

applies for an order specifically directing those officers to turn the property over to him. The contention on their part is that, as the state court obtained jurisdiction of the matter and possession of the property before the proceedings were instituted in this court, the possession can not be disturbed by process issued from this court; citing In re Chambers 3 Am. Bank R. 537, 98 Fed. 865; Trust Co. v. Bembow, 3 Am. Bank R. 9; 96 Fed. 514. But the proceeding in the State Court is one incident to the insolvency of the corporation, and it seems to be well settled that the bankruptcy gives exclusive jurisdiction to the United States Court in such matters, where proceedings are properly instituted, and ousts the State Courts of all jurisdiction with respect to the possession or distribution of insolvent estates. Tua v. Carriere, 117 U. S. 201; In re Smith, 92 Fed. 135; In re Independent Ins. Co., Fed. Cas. No. 7018; Thornhill v. Bank, Fed. Cas. No. 13992; Griswold v. Pratt, 9 Metc. (Mass.) 16; In re Storm 103, Fed. 618."

In the case of *in re* Storck Lumber Co., 114 Fed. 360, decision by Judge Morris in the eastern district of Maryland, where a proceeding was brought by a stockholder against the corporation alleging its insolvency, a receiver was appointed, and subsequent to the appointment of that receiver in the State court an involuntary proceeding in bankruptcy was commenced in the United States District Court, and the question directly arose as to whether the receiver appointed in the bankrupt proceedings was entitled to take the possession of the property away from the receiver of the State court. The Court held that he was so entitled and said: "The Maryland Statutes for winding up insolvent corporations is in the nature of a proceeding in insolvency." . . . "The National Bankrupt act of 1898 superseded the State insolvent laws, and now, when commercial and manufacturing corporations are so numerous, and are sometimes used, as in this case, more as a cover from individual liability

than for legitimate uses, it can hardly be supposed as the bankrupt act especially provides for proceedings against commercial corporations, that it was intended that such a corporation could commit acts of bankruptcy and escape the provisions of the bankrupt act by applying to be wound up under the State statute, and thus defeat the operation of the bankrupt law." Citing a number of cases. As I have said, the circumstances surrounding the institution and progress of the suit down there at New Albany show that M. Zier, the principal stockholder and Vice-President and Manager of the corporation, selected the receiver, and it was just as much the act of the Bankrupt as if it had made a voluntary assignment and selected the trustee.

Now on this question of summary proceedings, without taking the time to go over it, the Supreme Court of the United States has held as late as the case of White vs. Schloerb, 178 U. S. 542, that the district court sitting as a court of bankruptcy has the power by summary proceedings to take from an officer of a state court property which belongs to the bankrupt estate. It has been decided in several of the cases which have come before the Supreme Court of the United States that that power exists and the only question made in those cases was as to whether or not the possession of the person from whom the property was sought was adverse; and as I have stated here before, when that question was here originally before this court, that was the contention made by the counsel for the receiver in the state court. But it has been decided by the Supreme Court of the United States several times that an assignee in the case of voluntary assignment does not hold adversely. It has been decided that a purchaser who purchases from an assignee under a voluntary assignment does not hold adversely, and that property can be taken from such purchaser

by summary proceedings. It has been held where a petition was brought against a man to put him into involuntary bankruptcy, that his agent, who had received from him cash prior to the institution of bankruptcy proceeding, could be compelled by a summary proceeding to turn that cash over to the trustee.

The Federal Courts, the bankruptcy courts, have in a number of cases in addition to those which I have cited, held that the jurisdiction is exclusive and the power to issue a summary order does exist.

But that is not all. The Supreme Courts of many of the states have gone farther than the Federal Courts. In the case of Lothrop vs. Highland Foundry Company, 128 Mass. 120, in a decision by Judge Gray, who was then chief justice of the Supreme Court of Massachusetts and who was afterwards as you all know an associate justice of the Supreme Court of the United States, who decided the case where property had been sold to a purchaser as I have stated, used this language in speaking upon the question as to whether or not an enactment of a bankrupt law suspended the state law:

> "The omission of the legislature of the commonwealth to make any regulations whatever as to the suspension or revival of the operation of the insolvent laws, by reason of the contemplated or the actual enactment or repeal of the last bankrupt act, can hardly be explained on any other hypothesis than that it was considered to be settled by the judgments of this court, that no such legislation was necessary, either to suspend the operation of the insolvent laws so long as the bankrupt act continued in force, or to revive the operation of all the provisions of the insolvent laws, as if they had never been suspended, so soon as the bankrupt act was repealed: and that the effect, and the only effect, of the bankrupt act upon the insolvent laws was to suspend, so long as it was in force, the *right to institute* proceedings under those laws in cases within its provisions."

The Supreme Court of Massachusetts in a recent case, decided since the present bankrupt law went into force, Parmenter Mfg. Co. v. Hamilton, et al, 51 N. E. 529, goes over this whole question and among other things says:

"The question in this case is whether this act so far superseded the insolvency laws of this commonwealth from the time of its passage as to deprive our courts of jurisdiction to entertain petitions for the commencement of insolvency proceedings filed after July 1, 1898. This depends upon upon the intention of Congress, as manifested by the language above quoted. Of the power of Congress to pass an act having this effect there is no doubt. Constitution of U. S., Art. 1, Sec. 8, Cl. 4; Griswold vs. Pratt, 9 Metc. 16; *in re* Kline, 1 How. 277, 280; Sturgress vs. Crowninshield, 4 Wheat. 122, 192; Ogden vs. Saunders, 12 Wheat. 213, 369. The language is materially different from that of the bankruptcy act of 1867, and from that of the earlier bankruptcy law of 1841. . . . The argument that the change in question was intentional is almost irresistible. The act is 'to go into full force and effect upon its passage;' that is to say, the rights of all persons in the particulars to which this act refers are to be determined by the act from the time of its passage. Among these rights is the right to have insolvent estates settled in bankruptcy, under the provisions of the act, including the rights to have acts of bankruptcy affecting the settlement of estates, determined by it, to have the rights of debtors to file voluntary petitions, and of creditors to file involuntary petitions, determined by it, and to have preferences and liens governed by the provisions of it. These provisions affecting the rights and conduct of debtors and creditors are different from those previously existing in most of the states, and perhaps different from those found in the laws of any state, and they supersede all conflicting provisions. The only limitation upon the full and complete operation of the act upon its passage is that the right to begin proceedings is postponed one month in the case of voluntary petitions and four months in the case of involuntary petitions. Whenever the proceedings are commenced the conduct of the parties after

the passage of the act is to be tested by its requirements. The only saving clause affecting the jurisdiction of State courts, provides for cases commenced in those courts before the passage of the act. The plain implication is that proceedings commenced in the State courts after the passage of the act are unauthorized. This is in accordance with the earlier language giving the statute full force and effect from the time of its passage, except that the filing of petitions is to be postponed for a short time. We are of the opinion that the language was chosen to make clear the purpose of Congress that the new system of bankruptcy should supersede all state laws in regard to insolvency from the date of the passage of the statute."

The Supreme Court of Illinois, in the case of Harbaugh v. Costello, *et al.*, 56 N. E. 363, decided this question the same way. In that case a proceeding was attempted in the state court under the insolvency laws of the State of Illinois, after the passage of the bankruptcy act, when no proceedings had been commenced or attempted to be commenced in bankruptcy; and yet the state court held that it was without power or authority after the passage of the bankrupt act to entertain jurisdiction of such a suit. The court by McGruder, J., say: "It is provided in section 8 of the first article of the constitution of the United States that 'congress shall have power . . . to establish . . . uniform laws on the subject of bankruptcies throughout the United States.' In interpreting this provision of the constitution, it has been held that the power to pass insolvent or bankrupt laws was not thereby taken away from the states until congress itself should exercise the power thereby conferred by the passage of a bankrupt law. When, however, a bankrupt law is passed by congress, any state law upon the subject which may exist is suspended in its operation. As soon as a national bankruptcy act goes into effect, state insolvency laws are suspended and become inoperative, at least so far as they conflict with

the acts of congress upon the subject, and so far as they embrace the same subject matter as is embraced in the act of congress."

And, citing from Black on Bankruptcy, the Court says:

> "The passage of a national bankruptcy law by congress renders it supreme. The state laws in force must yield to it, and can no longer operate upon persons or cases, within the purview of the federal statutes. The latter does not, indeed, repeal or destroy the state laws on the same subject, but it suspends their operation. If the state law and the federal act operate upon the same subject matter, upon the same property, upon the same rights, and upon the same persons, creditors as well as debtors, or may so operate, they can not go together without direct and positive collision, and is such case the federal enactment suspends or supersedes the state law."

In the case at bar, as I have said, there was a deliberate attempt on the part of the Floyd Circuit Court to set up a court of bankruptcy. It is in evidence here that the entire property of this now bankrupt corporation was placed in the hands of the receiver of that court, every asset which it owned. The purpose, object, scope and effect of that proceeding was to wind up that insolvent corporation and distribute its assets among its creditors. In substance and effect it was a bankruptcy proceeding by a court which constituted itself, against the constitution and the laws of United States, a bankruptcy court. Since the issuing of the citation for contempt herein, Kelso, the receiver of the state court, has delivered the plant and property of the bankrupt to the receiver of this court without any order of the state court in the premises, and the receiver of this court is now in possession of the same. If the possession of the receiver of this court was illegal when the property

was wrested from him, it is illegal now. Since the commencement of the trial of these defendants, owing to the startling disclosures made in the evidence here, the fraudulent preference of $9,600 has been returned and paid in money to the receiver of this court.

If counsel for these defendants are right in their contention that the receiver of the state court is entitled to the possession of the plant, we shall then have the property of the bankrupt divided between this court and the state court and each of these courts will distribute a part of the estate between the same creditors and at the same time.

If the exclusive jurisdiction of the bankruptcy court is not upheld or is subordinated to some indefinable rule of comity, which is superior to the law and to the legal rights of parties, such a case of divided jurisdiction may arise at any time.

It has been said that if the amendment of February 5, 1903, had been in force when this State Court receiver was appointed, that then, following the analogy of the voluntary assignment cases, the receiver appointed by this court would have the power summarily to take charge of the property. But it is maintained that the amendment of February 5, 1903, was not in effect, so far as any act of bankruptcy, prior to the time of its passage, is concerned. This amendment took effect on February 5, 1903. On February 6, 1903, these proceedings in involuntary bankruptcy were commenced. Shortly after the original petition was filed, an additional petition, or an additional cause was alleged in a supplemental petition filed under this amendment, reciting the fact that a receiver had been appointed in the State Court at New Albany for M. Zier and Company. The question now is whether or not after the passage of this amendment the appointment of a receiver, or the having suffered a receiver

to be appointed within four months prior to that time, constituted an act of bankruptcy? It has been said that the question here is whether or not that amendment has a retroactive effect. It is well understood that congress has the power to pass retroactive laws if it sees fit. The question then, is, whether or not congress clearly intended the amendment to be retroactive in this respect.

In the original act it was specifically provided that the act should go into force and effect on the first day of July, 1898. It was further provided that no petition for voluntary bankruptcy should be filed within one month, and no petition for involuntary bankruptcy should be filed within four months thereafter. When this amendment was made no such provision was put into it, and the last clause of it, the last section of it, provides:

> "The provisions of this amendatory act shall not apply to bankruptcy cases pending when this act takes effect, but such cases shall be adjudicated and disposed of conformably to the provisions of the said act of July first, eighteen hundred and ninety-eight."

To my mind the fact that in the original act it was provided that no petition for voluntary bankruptcy could be filed within one month of the taking effect of the act, and that no petition for involuntary bankruptcy could be filed within four months of its taking effect, while in the amendatory act there is no postponement of the time, clearly indicates that congress intended its provisions to apply to any act of bankruptcy defined by its terms committed within four months prior thereto. It seems plain that when congress passed this amendment and made no provision for the postponement of its effect, that it intended that it should go into effect immediately.

Not only that, but the wording of the amendment is very suggestive. The original act provides: "Acts of bankruptcy by a person shall consist of his having . . . or (4) made a general assignment for the benefit of his creditors." Now this fourth sub-division is amended as follows: "Or (4) made a general assignment for the benefit of his creditors, or being insolvent applied for a receiver or trustee for his property or because of insolvency, a receiver or trustee *has been*, put in charge of his property under the laws of a state, of a territory, or of the United States." If it was intended that that amendment should have only a prospective effect, why didn't the act say "a receiver or trustee *shall be* put in charge of his property under the laws of a state, of a territory or of the United States?" But it is not necessary for this court to decide this point, and I do not decide it now. If this act took effect from and after its passage in the sense that the appointment of a receiver within four months prior to the filing of the petition in this case, constituted an act of bankruptcy that gave the court jurisdiction, I believe this to be the law, and if it were necessary to decide it in this case, I should so hold until some higher authority declared the law to be otherwise.

But aside from this additional cause setting forth the appointment of the Receiver there were in this petition legal and sufficient causes for an adjudication of bankruptcy alleged; and since the filing of the petition the proper notices have been given, the proper time has elapsed, the alleged bankrupt and those interested in it have suffered a default, and the corporation known as M. Zeir and Company has been adjudged by this court a bankrupt. So the authorities are, I think, plain, that when this court appointed Mr. Connor as Receiver, it had the power to arm that Receiver with sufficient power to take that property from

the Receiver of the State Court. If that is not the law, then a number of judges, including some of the best in the country, have been badly mistaken.

But that is not the question here. These defendants are not charged with resisting any summary order of this court. Why, gentlemen have with so much vehemence and vociferousness argued that question before this court, the court itself can not understand. That is not the question here at all. The facts in this case and the records in this court show that after Frederick D. Conner was appointed Receiver by this Court, the property which was then in the possession of the Receiver of the Floyd Circuit Court, as I have stated, was voluntarily and freely turned over to him as Receiver of the United States Court. For two days he held that possession, and after night, as I have said, certain persons went to that plant and forcibly ejected the Receiver of this Court from that property. The question here is: Was that a contempt of this Court? The men who committed the overt acts on that night have been found guilty of contempt, and a portion of them have suffered their punishment, and the remainder of them are now suffering theirs. The question here is: Whether or not as against the defendants, they not being present at the former trial, they are entitled to have it considered in that way; whether or not the persons who took forcible possession of this property away from the Receiver of this Court were guilty of contempt of this Court; and, in the second place, if such persons were guilty, did these defendants, or either of them, aid, encourage, counsel, command, or assist those persons in doing that unlawful act?

It was stated here yesterday upon the argument that this Court had the undoubted legal right to the possession of this property, but complaint was made of the manner in which it

got the possession. It is the first time that ever the Court has heard that complaint could be legitimately made as to the manner in which a person obtained possession of the property which he was conceded to have the lawful, legal, undoubted and exclusive right to the possession of. That the persons mentioned, with these defendants, in disregard of the process and orders of this court, went after night and with force wrested the property from the receiver of this court, there is no question. But it has been said that there is a certain thing which is above law, and that is comity, so called. It was announced here yesterday as a doctrine of necessity, and it was gravely argued, (I think I put it mildly when I say earnestly argued), that such comity exists between the federal and state courts that it was the duty of the receiver of this court to go into the Floyd Circuit Court, subject himself to the jurisdiction of that court, and humbly ask that court for an order requiring its receiver to turn this property over. It apparently was forgotten that that comity and courtesy was extended to the Floyd Circuit Court; that the receiver of this court went into that court and respectfully petitioned the judge of that court to order his receiver to turn it over, as by law all men must concede he was bound to do. But he not only did not rule upon the petition; he contemptuously ignored it, and as I have said continued it until the next term. After the removal of the receiver of the state court, who turned the property over to the receiver of this court, the Floyd Circuit by a series of forged records appointed Mr. Kelso as receiver. Now counsel who argued the law of this question yesterday spoke frequently about the converse of the propositions that he was arguing. If comity required the receiver of this court, which had exclusive jurisdiction, to go into a state court, which had no jurisdiction, and

humbly ask that court to order its receiver to turn the property over to him, why was not Mr. Kelso, the receiver appointed by that court, in duty bound, in exercising this same generous principle of comity, to come to this court and ask this court to order its receiver to turn the property over to him? He did not do it. He went after night by force and took possession of the property.

Now a great many authorities were cited here yesterday by counsel who argued the law question, in which expressions were used about the orderly procedure in courts. I want to ask who has been guilty of the breach of the orderly procedure? This court in the exercise of its undoubted constitutional and legal authority appointed a Receiver to take possession of this property. In an orderly and regular manner he went before the Floyd Circuit Court and asked that that property be turned over to him. Subsequently it was turned over to him. There was another Receiver appointed by the Floyd Circuit Court, and in defiance of the orderly and regular procedure that has been so much talked about, Mr. Kelso, instead of coming up here, as he ought to have done, if he was in earnest and thought he was right, went after night and pitched the Receiver of this Court out of that plant.

A number of cases were cited here yesterday by counsel who argued the legal questions that were supposed to be involved here, to the effect that in certain cases where State Courts had clear jurisdiction, Federal Courts would not interfere; and with a good deal of emphasis, a certain case decided by Chief Justice Fuller, and reported in 23 Supreme Court Reporter, at page 67, was exploited as the latest decision of the Supreme Court of the United States upon the questions there involved, (Metcalf v. Barker, 187 U. S., —). During this argument I called attention of the

counsel to the case of Clark v. Larrmore, decided by the Supreme Court of the United States. I stop by the way to say that the case of Metcalf v. Barker was decided December 1st, 1902, and this case of Clark v. Larremore, which I have here upon my desk, the opinion being written by Mr. Justice Brewer was handed down on February 23, 1903. The case of Metcalf v. Barker, decided by Mr. Chief Justice Fuller, holds this:—and I stop long enough to call attention of counsel to it: "Judgment creditors of a bankrupt by commencing a judgment creditors' action more than four months before the petition in bankruptcy is filed acquired a lien on the property of the bankrupt, of which they are not deprived by the bankruptcy act of July 1, 1898, section 67 f, because the judgment enforcing the lien is recovered less than four months prior to the filing of such petition, although by that section all judgments obtained against the bankrupt within that period are avoided, as this provision must be regarded as referring only to judgments creating liens, and not to the judgments which enforce an otherwise valid, pre-existing lien." I have not had the time to go through all the cases cited by counsel for the defendants from Peck v. Jenness, in 7th Howard, I believe it is, down to Clark v. Larremore, decided February 23, 1903; but I think I am safe in saying that not one of those cases which apparently sustain the contention of the gentlemen here, differs from this case of Metcalf v. Barker, in this essential particular, namely, that each one of them was a suit to enforce a valid pre-existing lien. This Court does not doubt that a lien existing prior to four months of the filing of a petition in involuntary bankruptcy, the enforcement of which is being attempted in a state court prior to the filing of the petition in bankruptcy can not be disturbed by the summary process of this court. There is no question about

that. But the bare statement of the question shows that it has no application here. And in this decision of Clark vs. Larremore of February 23, 1903, the distinction is squarely drawn between the cases cited to the Court and other cases which might be mentioned. I will call the attention now of the gentlemen to this case. It has been gravely argued here that when once the state court gets jurisdiction of property, that then this court can not disturb its possession without its assent. The case which I hold in my hands arose upon this state of facts; one man procured a judgment against another, had an execution issued, placed it in the hands of the sheriff, and the sheriff levied upon the defendant's land, sold it, and had something like $12,000 of the purchase money in his hands. At that time, after the judgment had been rendered in the state court, after the execution had been issued and levied, after the property had been sold and the money was in the hands of the sheriff, an involuntary petition in bankruptcy was filed against the debtor, and by summary order issued by the bankruptcy Court, the sheriff was ordered to turn the money over to the Trustee.

And the Supreme Court of the United States held that that was proper.

That is what Justice Brewer says:

"The judgment in favor of petitioner against Kenney was not like that in Metcalf v. Barker (187 U. S. ———), one giving effect to a lien theretofore existing, but one which with the levy of an execution issued thereon created the lien." And that is what makes the difference.

So then this court is of the opinion that it had the power when this application for a receiver was made to appoint a receiver; that it had the power by summary process to take the property from the receiver of the state court and place it in the possession of the receiver of this court.

But as I have said, that is not the question here. The court holds that this property having been placed peaceably, quietly and voluntarily by the then custodian of it in the possession of the receiver of the United States court, all persons who thereafter interfered with that possession, knowing the facts, are guilty of a gross contempt of this court.

Considerable has been said about the power of this Court to punish for contempt. Some discussion has been had as to whether or not it is an inherent power, or whether or not it is given by Section 725, of the judiciary act. The question has been raised as to whether that act has conferred the power or is a limitation upon it. This Court does not think it makes a particle of difference which view is correct, especially since it is given the power in the bankrupt law itself. Section 2 of the bankrupt act of 1898, in enumerating the powers of courts of bankruptcy, under subdivision 13, of Section 2, says: "To enforce obedience by bankrupts, officers, and other persons to all lawful orders, by fine or imprisonment, or fine and imprisonment;" so that whatever may be said about the source of the power, it is there sufficiently given in the bankrupt act itself. This Court has no doubt whatever that Kelso, and those with him, who went down on that Friday night and took possession of this property were guilty of a flagrant, a gross contempt of this Court. And they have been punished therefor.

The question now before this Court is, whether or not these defendants or either of them had such connection with that transaction as to make them guilty also? The evidence shows that when W. W. Watts agreed with Mr. Jewett to turn this property over to the Receiver of the United States Court, and left Indianapolis, that he went to Louisville, his home. He himself swears that the nearer he got to Louis-

ville the more he thought he had done wrong in voluntarily offering to turn this property over. He went to his friend Sachs, the other defendant, and procured him to go with him to New Albany the next day for the purpose, as they claim of making peace for Watts with Judge Utz. W. W. Watts, and his brother J. R. Watts, D. A. Sachs, and both his brothers, Morris Sachs and Joseph Sachs, have testified that W. W. Watts is a very busy man with a large practice in Louisville; that D. A. Sachs is a very busy man with a large practice in Louisville. The uncontroverted fact is that both of these gentlemen went to New Albany on Wednesday, the 18th day of February, and spent the entire afternoon there. They spent most of the day Thursday there. They spent most of Friday there. They spent, if I remember the evidence right, most of Saturday there. What were they there for? According to their testimony they were there to appease the wrath of Judge Utz.

So far as the defendant Sachs is concerned the evidence hereby clearly shows that he took an active part in the proceedings which culminated in the removal of the New Albany Trust Company by the Floyd Circuit Court and in the appointment of Mr. Kelso as the receiver of that court: that it was upon a petition sworn to and largely prepared by him that the court acted in the removing of the New Albany Trust Company and in appointing Kelso as receiver; that he was there during the consultation with reference to the matter; that he aided and assisted in planning the line of battle for taking the property from the receiver of this court; that he assisted in the preparation of the processs issued to the sheriff under which the sheriff acted; and this court has no doubt whatever that he was at the plant of M. Zier and Company Saturday afternoon after Kelso was in possession, with Kelso looking over the plant, and making preparations with regard to the running of it.

It has been said here in argument by counsel that there is an irreconcilable conflict in the evidence. It is so stated by counsel on both sides. It has also been stated by counsel that it is not their province to say where the truth lies and who committed perjury. It is the province of the court to say where the truth lies and this court believes that D. A. Sachs in many important and material particulars committed willful and corrupt perjury in this case. The stenographer of Mr. Kelso, who has no interest whatever in this case, swears positively that Mr. Sachs took an active part in the preparation of the instrument which he signed and swore to. She swears positively that he took an active part in the preparation of the papers and proceedings which were immediately used to wrest the possession of this property from the receiver of this Court. Mr. Kelso swears the same thing, and Judge Utz swears the same thing. Kelso swears that Mr. Sachs was with him in the plant looking it over on Saturday, canvassing the situation, and advising with reference to starting the plant and that it was agreed between them that the plant should be started on Monday. Mr. Ruoff, who was the night watchman swears Sachs was there. Another gentleman, a deputy clerk, swears that he met Sachs on the street in New Albany, that evening when Sachs told him he had been out to the plant and he did not think the property was worth $5,000.

That Mr. Sachs has taken the witness stand here and has deliberately sworn that he had nothing to do with the preparation of that answer, that he can not deny that he signed it and swore to it, because it is in evidence in the record, but that he had nothing to do with its preparation, that he had nothing whatever to do with the proceedings which culminated in the wresting of this property from the receiver of this Court; that he was not at the plant that afternoon. So

I say that this Court has concluded that he committed willful and corrupt perjury here.

Another circumstance; Mr. Sachs testified that when he left Judge Utz on Wednesday evening, Judge Utz requested him, who, until that afternoon, was a stranger to him, a resident of Louisville—Mr. Sachs had never transacted any business as I recall the evidence in New Albany prior to that time—that Judge Utz requested him and Watts, both strangers in New Albany, to notify counsel interested in this case, for the creditors to appear in his chambers next morning. Going from Judge Utz's office they went to Jewett's office. It is in evidence here, and there is no dispute about it, that Mr. Jewett called up Mr. Kelso that afternoon over the telephone and asked him how long he would be in his office and told him to wait that some people would be over to see him. There is no question that Watts and Sachs went over to see him that afternoon, and that they were there from a half to three quarters of an hour, and yet Sachs took the witness stand and swore that the only purpose they had in going to Kelso's office that evening was to notify Kelso that Judge wanted to see him in chambers next morning. As has been well said, it is a remarkable circumstance that Judge Utz should call upon these Louisville lawyers, strangers to him, to run errands for him, and it was a remarkable circumstance if the only purpose and object of their visit to Kelso's office that evening was to notify Kelso that Judge Utz wanted to see him the next morning; that he should not have had Henry Jewett tell him when he called him over the telephone that Judge Utz wanted to see him at his office next morning. And it was a remarkable circumstance that they should have gone to Kelso's office, these busy men, who did not want any business this side of the river (they say they have all on the other side they can attend to),

should go to Kelso's office that afternoon and spend from a half to three-quarters of an hour with him. So I find that Mr. Sachs is guilty of a flagrant contempt of this Court.

It is claimed for Mr. Watts that he went to New Albany and did everything he could to turn this property over to the receiver of this court. The evidence shows that Watts was continually declaring and protesting that this property should be turned over. Counsel for Mr. Watts, in the argument in his behalf yesterday afternoon, spoke of the responsibility which this court has, and the power which it has. I trust I fully realize the responsibility which is imposed upon me in this case; I know I take no pleasure in exercising the powers which are incident to my present position. Counsel in that same connection said that Mr. Watts, according to the evidence, had not done one thing or said one word, that no witness had testified to his having done one thing or said one word in furtherance of this wrongful enterprise.

Until Mr. Watts returned to Louisville and procured his friend Sachs to go to New Albany, Mr. Sachs was a stranger to that proceeding. Mr. Watts undoubtedly got Mr. Sachs into the proceeding. He was over there Wednesday. The evidence in the case shows that when Judge Utz finally decided, at whose instance I know not, to cite the New Albany Trust Company before him for contempt, that Mr. Watts respectfully requested that he be cited also. It is in evidence before this Court that before Mr. Watts was served with the citation to appear and answer the charge of contempt in the Floyd Circuit Court, he informed the gentlemen that he was going to a restaurant or saloon, I have forgotten which, where he would be, and to send the Sheriff there to serve him. He was in New Albany, during all the time that these proceedings were planned and he returned to

Louisville with Mr. Sachs late in the evening of Friday, only a short time before the final proceedings were taken to throw the receiver of this court out of the possession of that property.

I understand these gentlemen, in order to be punished must be found guilty beyond a reasonable doubt, but I do not understand that this Court is bound by the denials of Mr. Watts. If the circumstances surrounding this transaction clearly established to this Court's mind beyond a reasonable doubt that notwithstanding Mr. Watts' protestation and declaration as to his intention and desires—that notwithstanding that, if through Mr. Sachs or by assisting Mr. Sachs he had anything whatever to do with the transactions which culminated in this unlawful act, he is guilty and this Court must find it, if the evidence shows it. Mr. Watts, his counsel, asks this Court to believe, throughout those four days, when the evidence in this case shows that he was associating with Judge Utz socially, drinking with him in saloons, hobnobbing with him, in the language of the street, during those four days, was there with his friend Sachs for no other purpose than to appease the wrath of Judge Utz against Watts. It is needless for me to say that this Court does not believe one word of it—not one word of it. I can not believe it. The only solution of his conduct that can be reached consistently with the evidence is this; according to his own testimony, the nearer he got to Louisville, the more he concluded that he had made a mistake in offering to turn the property over. But he had offered. Mr. Watts is one of those lawyers who prides himself on keeping his agreements made in court. I have known many such. Therefore, he did not wish to put himself in the position of openly violating the voluntary promise he had made in this Court. So he procured his friend Sachs to go with him to

New Albany and Sachs is put forward as the active manager of this thing and Watts remains in the background and continually protests that he wants to turn this property over and keep his agreement with the United States Court. He is like some other people. He protests too much. So I have come to the conclusion that Mr. Watts is guilty of a flagrant contempt of this Court.

Up to this time, so far as the law is concerned, my way seems to be clear. If I am mistaken about it, the gentlemen have their remedy. If this Court were infallible there would be no need for the Circuit Court of Appeals and still less need for the Supreme Court of the United States. It is the duty of this Court, in so far as it can, to ascertain what the law is, and, having ascertained what it is, as nearly as possible, to so declare it. I have not had much difficulty in coming to the conclusion that this Court had jurisdiction to do what it has done. I have not had much difficulty in coming to the conclusion that these defendants have been guilty of contempt of this Court. But the question as to what punishment should be meted out to them has given me considerable trouble. It has been a matter of considerable concern to me that at the very beginning of my career here, I have been confronted with this state of affairs. I can not but believe that the gentlemen who have taken part in these proceedings forget that it makes no difference who occupies this bench. The court is the same. My professional experience, has been confined largely to the state courts, and those courts with which I have been familiar were pervaded with an atmosphere of respect and reverence for the dignity and power and purity of the United States Courts. And when it became apparent to the present occupant of this bench that any court, or any officer of any court, or any person

within the district would undertake to do what these gentlemen have done, it was a matter of very great astonishment to me. I was urged to exercise the extreme powers of this court at once. I delayed. When the gentlemen were here before me on the 17th of February, after a full discussion on their part, in which I indulged them far more than they were entitled to, they voluntarily offered to turn this property over, and they did it. And therefore, that such a proceeding as did happen should happen was a matter not only of surprise, but of the utmost consternation, I think, to everybody, as well as to this court. If this court is going to administer justice as it sees it, it necessarily follows that the dignity and the power of the court must be maintained. All men, and lawyers especially, must understand that if they disagree with the court in any order it makes, they must not set themselves up to resist those orders. I have decided in this case—and I dislike exceedingly to do it—but I have decided in this case that my duty compels me to imprison these men. The only question in my mind is as to the term.

Evidence has been introduced as to their previous good standing. I believe both of them realize the mistake they have made and the wrong they have done. If they had come to this court even upon the service of the citation to show cause, and had acknowledged their wrong, it might have been different. They are lawyers; they have here, by their counsel, after a manner which I think is not entirely excusable, criticised the action of this court. They have asserted here, by their counsel, that this court has assumed a jurisdiction it did not have and has issued orders it had no lawful authority to issue. They have, through their counsel urged that, but on the witness stand, as witnesses, they have apparently tried to convey the impression to this court that they

recognized the lawful authority of the court to act—that they recognized it from the beginning. Indeed, Mr. Sachs swears that he himself said, when he heard of the order of February 17th, "That ends it." In other words, while through their counsel, they attack the jurisdiction of this court and loudly proclaim that this court has exceeded its powers and jurisdiction, that the orders which they have violated were no orders at all, and they have a right to violate them, they, on the witness stand, have conceded that the authority was rightfully exercised, and they ask this court to believe that they have done nothing whatever to interfere with it.

The sentence of the court is (and Mr. Sachs and Mr. Watts may stand up) that you are each guilty of a contempt of this court, as charged in the information and in the rule to show cause, and that you stand committed to the jail of Marion County for sixty days and pay the costs taxed against you, and the marshall is charged with the execution of this judgment.

And afterwards, to-wit: on the 14th day of March, 1903, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled matter were had, to-wit:

Come now the defendants William W. Watts and D. A. Sachs and file their Bill of Exceptions in the above entitled matter in the words following, to-wit:

Be it remembered that upon the calling of these proceedings for trial as to the defendants D. A. Sachs and William W. Watts, the said defendants enquired of the Court whether they were required to respond to the rule awarded against them in the above entitled bankruptcy proceedings, or to plead to the above entitled information filed by the United States District Attorney, whereupon the Court ruled and adjudged that the said defendants are re-

quired to respond to said rule and plead to said information con-jointly, and thereupon the said defendants each filed a separate response and plea.

Be it further remembered that upon the trial of said rule and information as to said defendants, the evidence of sundry witnesses was taken on behalf of the United States, and the evidence of sundry witnesses was taken on behalf of said defendants, and each of them, and certain documentary evidence was adduced on behalf of the United States, and also on behalf of said defendants, and each of them, all of which appears in full, together with the objections made thereto by either party and the rulings of the Court thereon and the exceptions thereto in the report of the Official Stenographer of this Court, which said report is here referred to, and filed herewith marked "X," and said evidence adduced and heard was, and is all the evidence adduced, and heard upon the trial.

Said stenographic report is made a part of this bill of exceptions, and is made part of the record.

And this bill of exceptions, being examined and approved by the Judge of this court, is signed by him, and filed, and made part of the record this 14th day of March, A. D. 1903.

ALBERT B. ANDERSON,

Judge.

Exhibit C.

Joseph T. Ryerson & Son
vs.
M. Zier & Co. } No. 5575.

Comes now Frederick D. Connor as receiver by George H. Hester his attorney, and by leave and order of the Court and upon his own motion, makes himself a party to this proceeding, and thereupon by leave of the Court files his verified petition showing his appointment as receiver of said M. Zier & Co. by order of the United States District Court for the District of Indiana and praying this Court for an order requiring the said New Albany Trust Company, as receiver of said M. Zier & Co. to turn over and surrender to him said Frederick D. Connor, as receiver in bankruptcy, the property of said M. Zier & Co. of which the said New Albany Trust Company as receiver of said M. Zier & Co. under the orders of this Court is custodian and the matter of said petition is now continued until the next term of this Court.

IN THE FLOYD CIRCUIT COURT.

JANUARY TERM, 1903.

Jos. T. Ryerson & Son
vs.
M. Zier & Company. }

To the Honorable W. C. Utz, Judge of the Floyd Circuit Court:

Frederick D. Connor, receiver appointed by the United States District Court for the District of Indiana, intervening in the above entitled cause, respectfully shows to the court:

That on the 11th day of February, 1903, by the con-

sideration of the United States District Court for the District of Indiana, upon the petition of the Inland Steel Company, John C. Thurston and John Dey, doing business as Dey Time Register Company, he was appointed by said court as receiver, with authority to take charge of all property of said M. Zier & Company and to hold the same in his custody until the further order of said court; that he has duly qualified as such receiver according to the requirements of the order appointing him, by filing his bond therein to the approval of the Hon. Albert B. Anderson, Judge of said court, and is ready to assume control of the property of said M. Zier & Company as soon as the same is turned over to him by the New Albany Trust Company, heretofore appointed as receiver in this cause by this court; a certified copy of the order of the United States District Court is filed herewith and attached hereto marked exhibit "A."

Your petitioner therefore, respectfully prays that said The New Albany Trust Company be directed and required to immediately turn over to this petitioner all of the property, assets, books, moneys and other effects of said M. Zier & Company now in its possession and control and to immediately file with this court its account in writing, showing the amounts of money collected by it and now on hand. The petitioner further prays that said The New Albany Trust Company be discharged as such receiver herein.

FREDERICK D. CONNOR,
Receiver of M. Zier & Company.

STATE OF INDIANA, }
County of Floyd. } *ss.*

Frederick D. Connor, being duly sworn on his oath says that the matters stated in the foregoing petition are true in substance and in fact as he verily believes.

FREDERICK D. CONNOR.

Subscribed and sworn to before me this 14th day of February, 1903.

CHARLES B. SCOTT,
Clerk F. F. C.
By William F. Ruoff,
Deputy.

INLAND STEEL COMPANY }
vs. } In Bankruptcy.
M. Zier & Company. }

Comes now the Inland Steel Company, petitioner in Bankruptcy herein, which having filed its petition to have M. Zier & Company declared a bankrupt, now files its verified petition alleging that an emergency exists for the immediate appointment by the court of a receiver herein to take charge of the property and effects of said M. Zier & Company pending the hearing of said petition and the appointment of a trustee in bankruptcy herein, which petition reads as follows: (here insert).

And the court being advised after due consideration, finds that the prayer of said petitioner ought to be granted and that a receiver ought to be appointed to take charge of the property and effects of said M. Zier & Company previous to the hearing of said petition and the appointment of a trustee herein.

It is therefore considered and ordered by the court that Frederick D. Connor, be, and he is hereby appointed as receiver herein of the property and effects of said M. Zier & Company, with authority to take charge and possession of all the same and particularly the goods, wares and merchandise, books, papers and effects of or belonging to said M. Zier & Company located at the city of New Albany, Floyd County, Indiana, and now in the hands of The New Albany Trust Company as receiver of said M. Zier & Company appointed by the Floyd Circuit Court, of Floyd County, Indiana. And said receiver is ordered and directed to take into his possession the sheet iron and boiler manufacturing plant in said city of New Albany, together with all the tools, machinery, appliances, material and finished products within and about said plant at said city of New Albany, which plant is located at the corner of Pearl and Oak streets of said city, and all other property of said M. Zier & Company wheresoever found and situated.

It is further ordered and adjudged by the court that The New Albany Trust Company be, and it is hereby required to deliver up to said Frederick D. Connor as receiver of the said property and effects of said M. Zier & Company now in its possession and to refrain hereafter from interfering in any way with the said receiver's possession and control of the same.

It is further ordered that before entering upon the duties of his said trust herein, the said Frederick D. Connor shall execute to the Clerk of this Court and file with the Clerk of this Court, a bond and sureties to the approval of this court in the sum of ten thousand dollars ($10,000), for the faithful discharge of his duties as such receiver and take the oath required by law of said officers.

February 11, 1903. ALBERT B. ANDERSON,
Judge.

I, Noble C. Butler, Clerk of the United States District Court, for the District of Indiana, hereby certify that the above and foregoing is a true and correct copy of an order made and entered by the United States District Court, for the District of Indiana, on the records of said court, at New Albany, Indiana, on the 11th day of February, 1903, of which records I am the proper custodian.

NOBLE C. BUTLER,
Clerk U. S. District Court.

[SEAL.] By George B. Cardwill,
Deputy Clerk.

UNITED STATES OF AMERICA, }
District of Indiana. } *ss.*

I, Noble C. Butler, Clerk of the District Court of the United States for the District of Indiana, do hereby certify that the above and foregoing is a full, true and complete copy of the petition of Frederick D. Connor, Receiver, etc., produced in evidence in said court in the cause of the United States vs. William W. Watts, D. A. Sachs, et al.

WITNESS my hand and the seal of said court, at Indianapolis in said District, this 12th day of March, A. D. 1903.

NOBLE C. BUTLER,
[SEAL.] *Clerk.*

FILE COPY.

16 Orig.

Office Supreme Court U.
FILED
MAR 23 1903
JAMES H. McKENNEY,
Clerk.

In re Sacks, Pet.r

Exhibits A, B & C filed with Petition.

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APPENDIX 1.

Exhibit A.

STATE OF INDIANA, }
FLOYD COUNTY, } *Set.*

BE IT REMEMBERED That on the 30th of December, 1902, the following complaint was filed in the office of the Clerk of the Floyd Circuit Court, to-wit:

STATE OF INDIANA, }
FLOYD COUNTY, } *ss.*

IN THE FLOYD CIRCUIT COURT.

JOSEPH T. RYERSON & SON, ... *Plaintiff,*

VS.

M. ZIER & CO., ... *Defendant.*

The plaintiff, Jos. T. Ryerson & Son, complaining of the defendant, M. Zier & Co., for first paragraph of complaint says that the plaintiff, Jos. T. Ryerson & Son is a corporation organized under the laws of the State of Illinois and that said defendant, M. Zier & Co. is a corporation organized

under the laws of the State of Indiana; that heretofore, to-wit: on the 15th day of October, 1901, the said defendant, M. Zier & Co. by its promissory note, a copy of which is filed herewith and made part of this paragraph of comp'aint marked Exhibit "A," promised to pay to the plaintiff Joseph T. Ryerson & Son by name of J. T. Ryerson & Son the sum of $3461.70, sixth days after said date with interest at seven per cent. from and after maturity until paid and attorneys' fees. That said note is due and remains wholly unpaid. Plaintiff further avers that said defendant, M. Zier & Company, is insolvent; that said defendant is indebted in a large amount of money to divers persons and corporations, to-wit, in the sum of $65000.00; that it is unable to meet its said obligation and that its creditors are threatening to enter suits against it; that the property and assets of said defendant corporation consist of a manufacturing plant in the City of New Albany, which is in operation and is now engaged in filling unfinished orders and working on unfinished contracts. That said defendant is now without means or money with which to continue the operation of said business. That if suits are instituted against said defendant and its property seized upon an execution or attachment the assets will be dissipated and the plant of the defendant be rendered of much less value to its creditors generally than if the said property be properly prese ved; that the property fund and profits of the business of said defendant are in danger of being lost and materially injured and destroyed unless a Receiver be immediately appointed to take charge of said property and hold the custody and possession thereof and to preserve the same until plaintiff's cause can be determined and until such further orders shall be made in this proceeding as the Court shall deem proper and necessary.

WHEREFORE plaintiff says that it is necessary that a Receiver be appointed to take charge of the property of

said defendant; that an emergency exists for the immediate appointment of said Receiver by the Judge of this Court, and it prays that said Receiver be appointed at once and that he be invested with such power and authority as the Court shall deem proper under the circumstances.

Said plaintiff for second paragraph of complaint against said defendant says that heretofore, to-wit: on the 15th day of October, 1901, the said defendant M. Zier & Co., by its promissory note, a copy of which is filed wi h and made part of this paragraph of complaint marked Exhibit "B," promised to pay to the plaintiff, Jos. T. Ryerson & Son by name of J. T. Ryerson & Son, the sum of $3470.26, seventy-five days after said date with interest at seven per cent. from and after maturity until paid and attorneys' fees. That said note is due and remains wholly unpaid. Plaintiff further avers that said defendant, M. Zier & Co. is insolvent; that said defendant is indebted in large a amount of money to divers persons and corporations, to-wit: in the sum of $65-000.00; that it is unable to meet said obligations and that its creditors are threatening to enter suits against it; that the prope ty and assets of said defendant corporation consist of a manufacturing plant in the City of New Albany, which is in operation and is now engaged in filling unfinished orders and working on unfinished contracts. That said defendant is now without means or money with which to continue the operation of said business. That if suits are instituted against sa'd defendant and its property seized upon an execution or attachment the assets will be dissipated and the plant of the defendant be rendered of much less value to its creditors generally than if the said property be properly preserved; that the property fund and profits of the business of said defendant are in danger of being lost and materially injured and destroyed unless a Receiver be

immediately appointed to take charge of said property and hold the custody and possession thereof and to preserve the same until plaintiff's cause can be determined and until such further orders shall be made in this proceeding as the Court shall deem proper and necessary.

WHEREFORE plaintiff says that it is necessary that a Receiver be appointed to take charge of the property of said defendant; that an emergency exists for the immediate appointment of said Receiver by the Judge of this Court; and it prays that said Receiver be appointed at once, and that he be invested with such power and authority as the Court shall deem proper under the circumstances.

Said plaintiff for third paragraph of complaint against said defendant says that heretofore, to-wit: on the 24th day of October, 1902, the said defendant M. Zeir & Co. by its promissory note, a copy of which is filed with and made part of this paragraph of complaint marked exhibit "C" promised to pay to the plaintiff, Jos. T. Ryerson & Son by name of Joseph T. Ryerson & Co, the sum of $1043.14 fifteen days after said date with interest at Seven per cent. from and after maturity until paid and attorneys' fees. That said note is due and remains wholly unpaid. Plaintiff further avers that said defendant, M. Zier & Co., is insolvent; that said defendant is indebted in a large amount of money to divers persons and corporations, to-wit: in the sum of $65000.00; that it is unable to meet its said obligations and that its creditors are threatening to enter suits against it; that the property and assets of said defendant corporation consist of a manufacturing plant in the City of New Albany, which is in operation and is now engaged in filling unfinished orders and working on unfinished contracts. That said defendant is now without means or money with which to continue the operation of said business. That if suits are

instituted against said defendant and its property seized upon an execution or attachment the assets will be dissipated and the plant of the defendant be rendered of much less value to its creditors generally than if the said property be properly preserved; that the property fund and profits of the business of said defendant are in danger of being lost and materially injured and destroyed unless a Receiver be immediately appointed to take charge of said property and hold the custody and possession thereof and to preserve the same until plaintiff's cause can be determined and until such further orders shall be made in this proceeding as the Court shall deem proper and necessary.

WHEREFORE plaintiff says that it is necessary that a Receiver be appointed to take charge of the property of said defendant that an emergency exists for the immediate appointment of said Receiver by the Judge of this Court, and it prays that said Receiver be appointed at once, and that he be invested with such power and authority as the Court shall deem proper under the circumstances.

Said plaintiff for fourth paragraph of complaint against said defendant, says that heretofore, to-wit on the 15th day of October, 1901, the said defendant, M. Zier & Co. by its promissory note, a copy of which is filed with and made part of this paragraph of complaint marked Exhibit "D," promised to pay to the plaintiff, Jos. T. Ryerson & Son by name of J. T. Ryerson & Son, the sum of $3478.84, ninety days after said date with interest at Seven per cent. from and after maturity until paid and attorneys' fees. That said note is due and remains wholly unpaid. Plaintiff further avers that said defendant, M. Zier & Company, is insolvent; that it is unable to meet its said obligations and that its creditors are threatening to enter suits against it; that the property and assets of said defendant corporation consist of a

manufacturing plant in the City of New Albany, which is in operation and is now engaged in filling unfinished orders and working on unfinished contracts. That said defendant is now without means or money with which to continue the operation of said business. That if suits are instituted against said defendant and its property seized upon an execution or attachment the assets will be dissipated and the plant of the defendant be rendered of much less value to its creditors generally than if the said property be properly preserved; that the property fund and profits of the business of said defendant are in danger of being lost and materially injured and destroyed unless a Receiver be immediately appointed to take charge of said property and hold the custody and possession thereof and to preserve the same until plaintiff's cause can be determined and until such further orders shall be made in this proceeding as the Court shall deem proper and necessary.

WHEREFORE plaintiff says that it is necessary that a Receiver be appointed to take charge of the property of said defendant; that an emergency exists for the immediate appointment of said Receiver by the Judge of this Court, and it prays that said Receiver be appointed at once, and that he be invested with much power and authority as the Court shall deem proper under the circumstances.

Said plaintiff for fifth paragraph of complaint against said defendant says that heretofore, to-wit: on the 2nd day of December, 1901, the said defendant, M. Zier & Co. by its promissory note, a copy of which is filed with and made part of this paragraph of complaint marked Exhibit "E," promised to pay to the plaintiff, Jos. T. Ryerson & Son by name of J. T. Ryerson & Son, the sum of $3000.00, sixty days after said date with interest at Seven per cent. from and after maturity until paid and attorneys' fees. That

said note is due and remains wholly unpaid. Plaintiff further avers that said defendant, M. Zier & Co., is insolvent; that said defendant is indebted in a large amount of money to divers persons and corporations, to wit: in the sum of $65000.00; that it is unable to meet its said obligations and that its creditors are threatening to enter suits against it; that the property and assets of said defendant corporation consist of a manufacturing plant in the City of New Albany, which is in operation and is now engaged in filling unfinished orders and working on unfinished contracts. That said defendant is now without means or money with which to continue the operation of said business. That if suits are instituted against said defendant and its property seized upon an execution or attachment the assets will be dissipated and the plant of the defendant be rendered of much less value to its creditors generally than if the said property be properly preserved; that the property fund and profits of the business of said defendant are in danger of being lost and materially injured and destroyed unless a Receiver be immediately appointed to take charge of said property and hold the custody and possession thereof and to preserve the same until plaintiff's cause can be determined and until such further orders shall be made in this proceeding as the Court shall deem proper and necessary.

WHEREFORE plaintiff says it is necessary that a Receiver be appointed to take charge of the property of said defendant; that an emergency exists for the immediate appointment of said Receiver by the Judge of this Court, and it prays that said Receiver be appointed at once, and that he be invested with such power and authority as the Court shall deem proper under the circumstances.

WHEREFORE said plaintiff demands judgment against said defendant for the sum of $15000.00 and prays for the

appointment of a Receiver to charge and possession of the property funds and assets of said defendant, and that the Court shall make such orders as shall be necessary and proper for the preservation of said property for the continuance of said business for the purpose of completing unfinished contracts, and such other and further orders as the Court shall deem necessary and proper.

W. W. & J. R. WATTS,

Attorneys for Plaintiffs.

EXHIBIT "A."

Dec. 17th

$3461.70 $3461‡ New Albany, Ind., Oct. 15–1901

Sixty days after date we promise to PAY TO THE ORDER OF J. T. RYERSON & SON THIRTY-FOUR HUNDRED SIXTY-ONE & 70-100 DOLLARS.

NEGOTIABLE AND PAYABLE AT

Copy. NEW ALBANY NATIONAL BANK.

Without any relief whatever from Valuation or Appraisement Law, for value received, with interest at Seven per cent. per annum from and after maturity until paid, and Attorneys Fees. The drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of this note.

No. 828 M. ZIER & CO.

Due Dec. 17. By H. E. Eury,

Charged E. H. *Secy.*

EXHIBIT "B."

Jan. 1st, 1902.

$3470.26 $3470‡ New Albany, Ind., Oct. 15–1901.

Seventy-five days after date we promise to PAY TO THE ORDER OF J. T. RYERSON & SON THIRTY-FOUR HUNDRED SEVENTY & 26-100 DOLLARS.

NEGOTIABLE AND PAYABLE AT THE
NEW ALBANY NATIONAL BANK.

Without any relief whatever from Valuation or Appraisement Law, for value received, with interest at Seven per cent. per annum from and after maturity until paid, and Attorneys Fees. The drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of this note.

No. 829 M. ZIER & CO.

Due Jan. 1, 1902. By H. E. Eury,

Charged Back. *Secy.*

Copy.

EXHIBIT "C."

$1043.14 New Albany, Ind., Oct. 24, 1902.

Fifteen days after date, we promise to PAY TO THE ORDER OF JOSEPH T. RYERSON AND CO. TEN-HUNDRED AND FORTY-THREE 14-100 DOLLARS.

NEGOTIABLE AND PAYABLE AT THE

Copy. NEW ALBANY NATIONAL BANK.

Without any relief whatever from Valuation or Appraisement Law, for value received, with interest at Seven per cent, per annum from and after maturity, until paid, and Attorneys Fees. The drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of this note.

No. 1729. M. Zier & Co.

Due Nov. 11-02. By M. Zier,

Charged Back Dec. 2-02. B. S. *V. Pres. & Treas.*

EXHIBIT "D."

Jan. 16th.

$3478.84 $3478‡ New Albany, Ind., Oct. 15, 1901.

Ninety days after date we promise to PAY TO THE ORDER OF J. T. RYERSON & SON, THIRTY-FOUR HUNDRED SEVENTY-EIGHT & 84-100 DOLLARS.

NEGOTIABLE AND PAYABLE AT THE

Copy. NEW ALBANY NATIONAL BANK.

Without any relief whatever from Valuation or Appraisement Law, for value received, with interest at Seven per cent per annum from and after maturity until paid, and Attorneys Fees. The drawers and endorsers severally waive presentment for payment, protest and notice of protest and non-payment of this note.

No. 830 M. ZIER & Co.

Due Jan. 16, 1902. By H. E. Eury,

Charged Back E. H. *Secy.*

EXHIBIT "E."

$3000.00 $3000‡ New Albany, Ind., Dec. 2-1901.

Sixty days after date we promise to PAY TO THE ORDER OF J. T. RYERSON & SON, THREE-THOUSAND & 00-100 DOLLARS.

NEGOTIABLE AND PAYABLE AT THE
NEW ALBANY NATIONAL BANK.

Copy.

Without any relief whatever from Valuation or Appraisement Law, for value received, with interest at Seven per cent. per annum from and after maturity until paid, and Attorneys Fees. The drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of this note.

Charged Back E. H.
No. 942
Due Feb. 3, 1902.

M. ZIER & CO.
By M. Zier,
V. Pres. & Treas

Upon which complaint the following summons was issued to-wit:

THE STATE OF INDIANA.

TO THE SHERIFF OF FLOYD COUNTY, GREETING:

We command you to summon

M. ZIER & CO.

if it be found in your bailwick, personally to appear before the Honorable Floyd Circuit Court, on the second day of the next term thereof, to be holden at the Court House in

the City of New Albany, on the Second Monday of January, 1903, then and there to answer the complaint of

JOS. T. RYERSON & SON

and of this writ make due service and return.

Witness CHARLES B. SCOTT, Clerk of said Court, and the Seal thereof hereto affixed at the Court House in New Albany, Indiana, this 30th day of December 1902.

CHARLES B. SCOTT,
Clerk Floyd Circuit Court.

By William F. Ruoff,
Deputy.

[SEAL.]

Came to hand December 30th 1902 at 3 o'clock P. M. Served as commanded on the within named M. Zier & Co. by reading this writ to and in the presence and hearing of Michael Zier, Vice President and Treasurer of the M. Zier & Co., there being no President of the said M. Zier & Co. found in my bailwick. Done in Floyd County, Indiana, this 30th day of December 1902.

LOUIS C. HIPPLE,
S. F. Co.

Fees $1.00.

AND afterwards at Chambers In Vacation of said Floyd Circuit Court on the 30th day of December 1902 before the Hon. William C. Utz Sole Judge among other the following proceedings were had to-wit:—

"FLOYD CIRCUIT COURT,

IN VACATION.

Jos. T. Ryerson & Son;
Plaintiff,
vs.
M. Zier & Co.,
Defendant.
} Order appointing Receiver.

This day came the plaintiff Jos. T. Ryerson & Son, by W. W. & J. R. Watts, attorneys and enter a motion herein to appoint a Receiver herein to take charge of the assets of the defendant corporation and preserve the same under the orders of this Court as shall from time to time be made.

And came the defendant M. Zier and Company by M. Zier its President and by Jewett & Jewett attorneys and entered their appearance to the complaint herein and to the motion for the appointment of a Receiver.

And the parties by counsel having been heard and the pleadings herein being before the Court, and the Court being sufficiently advised it is considered by the Court that said motion shall be sustained and it is now hereby so adjudged and ordered.

It is further ordered and adjudged that The New Albany Trust Company be and it is hereby appointed Receiver of said M. Zier and Company to take charge and possession of all assets of said M. Zier & Company of whatever nature or wheresoever situated and hold and preserve the same subject to the further orders of the Court.

Said Receiver shall report at the next term of Court at as early day as is practicable an Inventory of all the assets coming to his hands and shall then report any recommendations he may have to make with respect to said estate, its conduct and its operation.

Said Receiver shall proceed to collect any moneys or other property due, or to become due to said estate and as

far as may be, shall continue the business of said M. Zier & Company and shall fulfill and complete any contracts now on hand and incompleted and until the further order of the Court shall continue the operation of said business as nearly as may be, as a going concern with power to employ such reasonable amount of help therein as may be necessary and to employ counsel to advise with and assist him in the conduct of its trust.

Said receiver is further authorized to make purchases of any necessary materials or any material or other goods necessary in the conduct of said business not to exceed in all, without further order of Court the total sum of $2500.00.

Said Receiver shall insure the property in this estate in such sum as said Receiver deems reasonable not however to exceed the sum of $10000.00. Said Receiver is further authorized and empowered to purchase such indemnity insurance against accident to employees as said Receiver may deem nesessary.

Before entering upon the duties of said Receivership, said Receiver shall, as required by law, take the oath of office for the faithful discharge of the duties of said Receivership and obedience to the orders of this Court, or the Judge thereof. Whereupon came the New Albany Trust Co., the Receiver herein and took the oath of office as required by law and accepted said trust.

Said Receiver is further authorized and empowered to sue and defend in its own name as Receiver any suits necessary to be prosecuted or defended for the protection or enforcement of the trust herein.

And power and jurisdiction is hereby reserved to enlarge, amend or restrict the duties and powers of said Receiver from time to time as may be deemed necessary.

December 30th, 1902. WILLIAM C. UTZ,

Judge."

AND afterwards In Vacation, at Chamber of said Floyd Circuit Court on the said 30th day of December, 1902, before the Hon. William C. Utz, Sole Judge among other the following proceedings were had to-wit:—

Joseph T. Ryerson & Son,
vs.
M. Zier & Co. } In Vacation.

Come now the New Albany Trust Company and files in the office of the Clerk of Floyd County Court its acceptance in writing as receiver together with the oath required by the appointment herein endorsed thereon, which reads as follows:

"STATE OF INDIANA,
County of Floyd. } *ss.*

I, Fred Sauer, Secretary of the New Albany Trust Company, for and on behalf of said Company, do hereby accept the appointment of Receiver in the cause now pending in the Floyd Circuit Court, wherein the Joseph T. Ryerson & Son is plaintiff and the M. Zier & Co. is defendant, and do hereby solemnly swear that The New Albany Trust Company as such Receiver will faithfully and honestly discharge the duties of said receivership in obedience to the orders of the Floyd Circuit Court and of the Judge thereof.

FRED SAUER.

Subscribed and sworn to before me, this 30th day of December 1902

CHARLES B. SCOTT,
Clerk F. C. C.
By William F. Rouff,
Deputy."

AND afterwards, In Vacation, At Chambers of the Floyd Circuit Court on the 3rd day of January 1903, before the Hon.

William C. Utz, Sole Judge among other the following proceedings were had to-wit:—

Joseph T. Ryerson and Son,
vs.
M. Zier & Co. } In Vacation.

Comes now the New Albany Trust Company, receiver in the above matter, and presents to the Judge of the Floyd Circuit Court, in Chambers its verified petition, which is in words and figures following:—

IN THE FLOYD CIRCUIT COURT.

"STATE OF INDIANA,
County of Floyd. } ss.

Jos. T. Ryerson and Son,
vs.
M. Zier & Company.

The New Albany Trust Company, receiver in the above entitled cause, respectfully reports to the Court that at the time of the appointment of this receiver, said M. Zier and Company was indebted to workmen, being machinists, boilermakers and other persons engaged in manual and physical labor in and about the plant of said concern for three days to-wit:— December 27, 29 and 30th that an itemized statement of such indebtedness if filed with and made part of this petition and referred to as Exhibit "A" that said M. Zier & Co. being a corporation and being insolvent at the time of the appointment of this Receiver; that this receiver believes that said amount due for wages is a preferred claim against the assets in its hands; that said sums except two items hereinafter referred to are due to mechanics and

laborers who are dependent upon their daily labor and wages for their support, and it would be a hardship for said persons to be compelled to file their claims individually and await the settlement of the estate for their payment; that to file said claims separately would involve not only delay but would increase the expense of the Administration of the trust, and that this Receiver is willing to advance sufficient money on account of said trust to pay said labor claim if the Court shall so direct and order them to be paid by the Receiver as preferred claims against the assets in its hands.

That the only two items in said statement attached hereto, which are regarded as being doubtful, preference and priority, are the three days of M. Zier, who is the Vice-President of said Company, amounting to $16.00 and three days for J. E. Eury who was the Secretary of said Company amounting to $15.00.

This Receiver therefore asks the direction an order of the Court in the matter.

Respectfully submitted,
THE NEW ALBANY TRUST COMPANY,
By Fred Sauer.

Fred Sauer, being shown on his oath says that he is the Secretary of the New Albany Trust Company and makes this affidavit on behalf of said Company; that the statements contained in the foregoing petition are true in substance and fact as he verily believes.

FRED SAUER.

Subscribed and sworn to before me this 3rd day of January 1903.

ELIZA A. TABLER,
[SEAL.] *Notary Public.*

My Commission expires Oct. 7, 1906.

EXHIBIT "A"

PAY ROLL FOR M. ZIER & CO.

Beginning Dec. 27th ending 30th, 1902.

NAME.	HOURS.	RATE.	AMOUNT.
Allard	27	.19	$5.13
Armstrong	27	.15	4.05
Atkins, C	27	.12½	3.37
Atkins, W. A	13	.12½	1.62
Boersig, Geo	27	.24	6.48
Boersig, Ed	27	.05	1.35
Bruder, Harry	28	.16	4.48
Bruder, O.	54	.14	7.56
Buckingham	27	.25	6.75
Bryant, Joe	27	.11	2.97
Bryant, John	27	.13½	3.65
Bybee	27	.12½	3.37
Cleceland	27	"	3.37
Carpenter	18	.06	1.08
Dixon, C.	27	.08	2.16
Duvall, Joe.	27	.17½	4.75
Duvall, Jim	27	.12½	3.37
Dunn.	27	"	3.37
Cookingdoffer	27	.05	1.35
Elliott.	27	.05	1.35
Embry	49	.22½	11.03
Frederick	27	.15	4.05
Guthrie.	18	.20	3.60
Gray	27	.15	4.05
Hopkins	27	.12½	3.37
Higgins.	29	"	3.63
Hammer.	20	"	2.50
Long, Sr	27	.20	5.40

NAME.	HOURS.	RATE.	AMOUNT.
Long, H	27	.10	2.70
Long, R	31	.24	7.44
Lines	27	.27½	7.43
Maupin	9	.12½	1.13
Miller, W. H	27	.27½	7.43
Miller, John	37	.12½	4.63
McKenna	27	.25	6.75
Monical	27	.15	4.05
McIntyre	27	.06	1.62
Stone, L	27	.22	5.94
Stone, Ed	27	.15	4.05
Sinkhorn	27	.12½	3.37
Schmitt	30	.17½	5.25
Story, Lewis	27	.12½	3.37
Schlageter	19	"	2.38
Sarles	27	.05	1.35
Schuler	27½	.12½	3.43
Scales, Joe	27	.07½	2.03
Veron, Joe	27	.17½	4.73
Van Winkle	27	.22½	6.08
Vernia	28	.12½	3.50
Widman, Jr	18	.07	1.26
Widman, Sr	27	.25	6.75
Weidman	27	.11	2.97
Welz, Geo	47	.06	2.82
Wells, C	27	.06	1.62
Ward	27	.12½	3.37
Wehner	30	.06	1.80
Young	45	.25	11.25
Raglon	27	.17½	4.73
Baugh	9	.10	.90
Brazil	27	.22½	6.08

NAME.	HOURS.	RATE.	AMOUNT.
Foust	14	.23	3.22
Dixon	40	.12½	5.00
Woodfill	31	.13½	4.19
Beard	5	.10	.50
Davison	27	.17½	4.73
Duvall, Bwn	27	.22½	6.08
Sarles	19½		1.33
Leaf	14	.12½	1.75
Fogle	18	.10	1.80
Austin	18	.12½	2.25
Walters	20	.17½	3.50
Normally, M	20	.14	2.80
Normally, Jim	20	.17½	3.50
Hughes, Jim	20	.14	2.80
Slattery	20	.23	4.60
Moore	14	.15	2.10
Buckingham, Cin. Job, 73 hrs. time 25c per hour		$18.75	
Drew from office		9.45	
			8.80
Foust, Geo., McHenry Job, 440 hrs. time 23c per hour		$101.20	
Drew from office		68.83	32.37
Zier, M., 3 days			19.00
Eury, H. E., "			15.00
Eury, J. G., "			6.00
Zier, L. M., "			2.00
Zier, Ed., "			1.00
TOTAL			$372.72

And the Court being satisfied it will be to the interest of said trust to pay the persons named in the pay roll attached to said petition the several amounts due them for wages for

labor performed for such insolvent corporation for the three days immediately preceeding the appointment of said Receiver for manual labor performed by said employees, it is now therefore ordered by the Judge of said Court that the said New Albany Trust Company as Receiver of the M. Zier and Company pay to the persons named in the pay-roll attached to the petition herein, the several amounts due them (except to M. Zier and H. E. Eury officers of said Company) the aggregate amount to be paid under this order being the sum of $341.72 and that upon making such payment said Receiver shall be subrogated to the performance and lien claimed and held by said laborers, mechanics and machinists for their said several claims as preferred creditors, and shall be allowed credit therefor in its accounts as and for the payment of a preferred claim.

Dated this 3rd day of January, 1903.

WILLIAM C. UTZ,
Judge Floyd C. C.

And afterwards in vacation of said Floyd Circuit Court on the 9th day of January, 1903, the following petition was filed to-wit:—

FLOYD CIRCUIT COURT.

STATE OF INDIANA, }
County of Floyd. }

Joseph T. Ryerson & Son,
Plaintiff.
vs.
M. Zier & Company,
Defendants.

PETITION OF RECEIVER FOR INSTRUCTIONS AS TO CONTRACT WITH ANGUILLA COTTON OIL COMPANY.

Comes the New Albany Trust Company, Receiver of M. Zier & Company, under order of this Court in the above

styled cause, and for its report and petition of its action thereon, it submits to the Court the following facts concerning a contract between M. Zier & Company and the Anguilla Cotton Oil Company, and asks the instructions of this Court, to-wit:—

That heretofore a contract was entered into between M. Zier & Company and the Anguilla Cotton Oil Company whereby it was agreed that for the sum of $3245.00, said M. Zier & Company should construct and set up for the said Anguilla Company at its plant in the State of Mississippi, ten certain specified tanks, made of iron, for which the said Zier Company was to receive, upon the satisfactory setting up of said tanks, the total sum of $3245.00; that in pursuance of said contract, the said Anguilla Company, advanced and paid to the said Zier Company the total sum of $1,081.67, and the same has been credited on the books of the said Zier Company to the account of the said Anguilla Company; that since the appointment of the receiver herein, the said Anguilla Company has made demand of the receiver that it fulfill the contract of the said Zier Company, but because of the complications of the receivership with respect to the payment of the said money theretofore to the said Zier Company, and because of the large expense which will be necessary in the payment of freight and the setting up of said tanks in Mississippi, this petitioner has been in doubt as to what it should do; that after consultation with the representatives of the Anguilla Company and the said M. Zier Company, it has finally agreed upon the settlement of the matter upon the following conditions, to-wit:—

There are eight of said tanks of a certain size which are now ready for shipment. There are two additional tanks of a larger size yet to be built. The cost and expense of shipment and setting up of all of said tanks would range

from $850.00 to $1100.00, as estimated by said Zier Company and the said Anguilla Company, shall receive at New Albany on board the cars, eight tanks now ready for shipment and the two tanks hereafter to be completed. That from said $3245.00, the original contract price, there shall be deducted the sum of $850.00, as an allowance to said Anguilla Company, for the payment of freight and setting up of said tanks in said State of Mississippi, so that when the matter is finally disposed of said Anguilla Company shall have credit for said sum of $850.00 and said $1081.67 already paid, or a total of $1931.67, and will pay this petitioner the sum of $1313.33. Said $1313.33 is to be paid to this petitioner, as stated, upon delivery of said tanks to said cars at New Albany, and the same shall be paid in such installments as the tanks shipped respectively bear to the total amount to be paid; that is to say that upon the shipment of the eight tanks, said Anguilla Company shall pay the proportionate value thereof out of $1313.33, to wit: $843.87, and upon the shipment of the other two tanks the remainder thereof shall be paid.

Your petitioner would further show to the Court that it believes this settlement of the matter is for the best interests of the estate. That the metal making up said tanks has been cut for special sizes under the terms of the contract, and that unless this plan of settlement is carried out, great loss will result to the estate herein, and it now recommends that it be instructed and ordered to carry out the settlement as agreed upon as stated; that said agreement has been made subject to the approval and ratification of the Court.

WHEREFORE Your petitioner prays that it have an order accordingly, and for all further and other proper relief.

W. W. & J. R. WATTS,

Attorneys for New Albany Trust Company, Receiver.

Fred Sauer says he is the Secretary of the New Albany Trust Company, Receiver of M. Zeir & Company, and that he has active charge of the management of the Receivership of M. Zier & Company, and is fully acquainted with the facts stated in the foregoing petition, and that the facts there stated are true.

FRED SAUER.

Subscribed and sworn to by Fred Sauer before me this 9th day of Jan'y, 1903.

CHARLES B. SCOTT,
Clerk F. C. C.

(Filed Jan. 9, 1903. CHARLES B. SCOTT, *Clerk F. C. C.*)

AND upon the filing of the foregoing petition, In Vacation at Chamber of said Floyd Circuit Court on the said 9th day of January, 1903 before the Hon. William C. Utz, Sole Judge among other the following proceedings were had to wit:—

FLOYD CIRCUIT COURT,
IN VACATION.

STATE OF INDIANA,
County of Floyd.

Joseph T. Ryerson & Son,
Plaintiff.
M. Zier & Company,
Defendant.
} Order.

This day came New Albany Trust Company, receiver of M. Zier & Company by W. W. and J. R. Watts its attorneys, and files its petition herein seeking the advice and instruction of the Court concerning the disposition of the contract between M. Zier & Company and the Anguilla Cotton Oil Company and certain tanks made thereunder and the Court being fully advised and it appearing to be

for the best interests of the estate herein, it is now hereby ordered that the Receiver herein shall deliver to the Anguilla Cotton Oil Company on the cars at New Albany, Indiana the ten tanks contracted for under said contract, at such times as the same may be completed by the Receiver herein and upon the payment of $1313.33 to said Receiver. And it appears to the Court that eight of said tanks are now completed, the same shall be immediately delivered to said cars upon the payment to the said Receiver of so much of said cash as the value of said tanks under said contract bear to the whole of said sum of $1313.33 to-wit:—$843.87 and that when said other two tanks are completed they shall be delivered to said cars upon the payment to said Receiver of the balance of said total sum of $1313.33 to-wit: $469.46 then remaining unpaid.

January 9th, 1903. WILLIAM C. UTZ,
Judge."

And afterwards at the January Term, 1903 of said Floyd Circuit Court on the 16th day of January, 1903, the Honorable William C. Utz, presiding, the following Report and Petition was filed in open Court, to-wit:—

FLOYD CIRCUIT COURT.

Joseph T. Ryerson & Son, *Plaintiff.*
vs.
M. Zier & Company, *Defendant.*

REPORT AND PETITION OF NEW ALBANY TRUST CO., RECEIVER.

Comes the New Albany Trust Company, Receiver herein and files this its report and petition herein, to-wit:

I.

Immediately upon it appointment and qualification herein, it took possession of the office and plant of M. Zier & Company in New Albany, and found therein a lot of office furniture and fixtures, a lot of machinery and tools, a lot of merchandise or material, the books of account of M. Zier & Company, and the accounts therein. It then proceeded with an inventory of the property coming to its hands with an appraisement thereof by Wm. M. Mix and S. J. Gardner, residents and householders of the City of New Albany, who were sworn to return a true, just and correct valuation of all the property, credits, rights and demands of the said M. Zier & Company, as exhibited by and coming to the hands of this Receiver. The petitioner now files herewith as a part hereof said inventory and appraisement and shows the following summary of the items therein contained, to-wit:—

Value of machinery, tools, etc	$ 6,410.50
Value of merchandise or material	8,572.77
Value of office furniture and fixtures	188.00
Value of accounts owing M. Zier & Co. considered good and collectable	9,286.37
Value of accounts owing to M. Zier & Co. doubtful of collection	3,877.17
Value of lease hold	100.00
TOTAL	$28,434.81

As a part of the assets of this estate considered by the appraiser, but not included in above, there are a number of contracts between M. Zier & Company and other persons wherein the said M. Zier & Company have heretofore agreed to supply certain material and labor for certain sums of

money specified, and petitioner, now, refers to that part of said inventory marked "Estimated Value of Unfinished Contracts," wherein these matters are set forth. Some of said contracts were partially filled, but there is yet more labor and material to be furnished on them before all of the money consideration therefor shall be paid by the debtors. On some other of said contracts, none of the material has been delivered though some labor has been performed in making up the material, and other labor and said material is yet to be furnished by said M. Zeir & Company before the consideration thereof shall be paid. On others of said contracts said M. Zier & Company have heretofore received substantial sums of money advanced on account thereof, and this Receiver is in some doubt as to what he shall do with respect to the fulfillment of such contracts, to-wit:

First.—There is a contract with Grainger & Company of the City of Louisville, Kentucky, for the erection of two cold storage tanks. Granger & Company are to pay the total sum of $860.00 therefor on completion thereof. The Material has been delivered to Grainger & Company's premises for the purpose of completing said contract, and there is yet about the sum of $200.00 of labor &c to be put upon said work to complete same. It appears now that said Grainger & Company will set off against the money consideration moving from them on said contract. With respect to this contract, the Receiver is going ahead with its completion, and for the purpose of having paid to it such money as is the difference between the amount of said advancement and the total sum Grainger & Company agreed to pay.

Second.—J. E. & F. Walter agreed to pay M. Zier & Company $1,750.00 for two 66 inch boilers and attachments as specified in the agreement. Said boilers and attachments are now in the course of building, but it will require the

expenditure of about $500.00 more than has already been spent to put them in a state of completion whereupon the balance of the money coming from J. E. & F. Walter may be paid. But it appears that the said Walters have advanced to the said M. Zier & Company the sum of $1,000 on said contract, and, inasmuch, as nothing on said contract has been delivered to the said Walters, this petitioner is advised that the said Walters stand in the position of creditor of said M. Zier & Company, only. And, in so much as the completion of said contract can only be done at a great loss to this estate, this Receiver recommends that it be instructed to report some new arrangement with said Walters rather than that it carry out the old contract.

Third.—Houston, Stanwood & Gamble Company contracted with said M. Zier & Company for two 66 inch by 18 feet, and one 66 inch by 16 feet boilers, said Houston, &c. to pay the total sum of $1,316.95 therefor. After the completion of said boilers, the same were billed to said Houston &c., said bill showing the number of said boilers. Same were left in the yard of M. Zier & Company as was customary between the parties; they were treated as the property of the said Houston &c. who paid $1,000.00 on account of said contract. It was customary between the parties to have boilers made and to let them lie in said yards until shipped according to the order and instructions of the said Houston &c. Petitioner is advised that the said property belongs to the said Houston &c. upon the payment by them of the balance owing upon said contract, to-wit: $316.95.

Fourth.—M. Zier & Company agreed to build for J. B. Speed & Company at Speeds, Indiana, a cement bin for the total sum of $1,075.80. About $788.89 worth of material therefor has already been delivered at said place on account of said contract, and it will cost about $175.00 to complete

said contract. Said J. B. Speed & Company have advanced to M. Zier & Company the sum of $371.75, and when said contract is completed the balance of $704.05 will be due and owing this Receiver. Under these circumstances, the petitioner recommends that said work be completed, and will continue to that end unless otherwise ordered.

This petitioner reports that there are other contracts for material and labor partially completed, but which are not complicated with advancements. And as to these, petitioner is now going ahead with the work of completing the several items for the purpose of delivery and payment thereupon.

It shows to the Court that its total receipt from all sources from the date of its appointment to January 13, 1903 is $3,461.77 while its total disbursements are $1,617.95, the details of all of which are to be found on the sheet attached hereto as a part hereof marked "Receipt and Disbursements."

II.

This petitioner would further show to the Court that the following state of facts exist with respect to its trust herein, to-wit:

There are on file in the office of M. Zier & Company the following contracts with divers presons and corporations for the delivery of the things and upon the prices indicated which contracts have heretofore been made by said M. Zier & Company, but upon which neither labor nor material has been furnished or made or advancements paid, viz:

Bedford Quaines Co., Bedford, Ind.

1 36-inch boiler. . . . . $ 230.00

Pittsburg Filter Mfg. Co., Pittsburg, Pa.

2 48-inch filters. 190.00

James McWilliams & Co., Louisville, Ky.	
1 30-inch tank	32.00
5 Lengths 20-inch pipe	115.00
1 36-inch tank	44.00
1 Brine tank	145.00
Louisville Soap Co., Louisville, Ky.	
2 16-feet soap tanks	1,100.00
Bedford Steam Stone Works, Bedford, Ind.	
1 30-inch x 60 foot smoke stack	140.00
Repairing one 60-inch boiler	125.00
W. E. Caldwell Co., Louisville, Ky.	
Material for one 10-foot x 6 foot tank	65.00
E. P. Slider, New Albany, Ind.	
1 50-horsepower portable boiler	600.00
Union Cement Lime Co., Louisville, Ky.	
2 50-inch x 22-feet boilers	1,398.00
United Gas & Electric Co., New Albany, Ind.	
1 Breeching	1,750.00
Union Breeching & Finishing Co., Greenville, S.C.	
Boilers, Drum, Long Turn Bend, six extra Heavy Eatons, Valves, Heater, etc., sold through International Steam Engineering Co.	5,980.15
TOTAL FACE VALUE OF CONTRACTS	$11,914.15

From the best sources of information attainable petitioner is informed that there is a profit of about 20 per cent. under normal conditions in the fulfillment of these contracts, and that there is a profit to be made in fulfilling each of them. It would show that there are many inquiries from customers and prospective customers, and that it believes, and therefore, alleges, that if this plant is to continue in

operation it can have additional business and can keep said plant reasonably busy.

It shows that there is now on hand about $8,500.00 worth of material some of which is raw and some worked material, and that better prices can be obtained in working it all up under contracts than selling it as it now is.

III.

This petitioner would show to the court that prior to the receivership herein the said M. Zier & Company were working about 100 to 125 men; that this receiver is now working about 40 men; that the smallest number of men with which the plant can be operated at all is 25 men; that the pay roll for the week ending with January 10, 1903, was $615.00, the rent $25.00, the fuel account about $25.00, the light bill about $2.00 and water about $2.00 or for those items, a total of about $669.00; that if the operation of said plant is to continue, petitioner should be instructed to fill the contracts now on hand mentioned above in paragraph 2, and be instructed to seek other profitable and advantageous work, and to buy such material from time to time as may be necessary for it to buy. It says that it should be authorized to issue receiver's certificates for the purpose of borrowing money and paying for material, operation and other expenses, etc. when necessary. It says that the men employed by it are employed by the day only, and that it is now employing and will employ only such number as is necessary.

IV.

This petitioner would show to the court that it is in doubt as to a recommendation concerning the indefinite

operation of the said plant; that while there is possibly a good profit to be made thereby for the benefit of the estate herein, the operation thereof is fraught with danger of loss, and so it is that this petitioner recommends that a day and place be fixed for the hearing of this report and petition and that the defendant, M. Zier & Company, and its officers and the creditors of this estate be notified thereof by this receiver, by mail, and by publication, to be then and there present to be heard with respect to their recommendations or objections thereto, and that they determine what shall be done with respect thereto.

A list of the creditors as shown by the books of said M. Zier & Company is attached hereto as a part hereof marked "List of Creditors."

And finally petitioner would show that divers and various complications are threatened and will probably arise, over various claims against this estate, and against this estate, and petitioner says that same will result in great expense and vexatious delay and annoyance to this estate in the settlement thereof unless same be prosecuted in this suit, and that all creditors and other persons should be notified to prove their claims against this estate, with this receiver or in this cause and be enjoined from prosecuting any claim against this estate except by intervening petition in this cause.

WHEREFORE: The premises considered, your petitioner prays that his action herein, so far as reported, be approved and ratified; that it have the Court's instructions with respect to continuance of the operation of said plant; that a time be fixed for the hearing of this report and petition, and that the defendant, M. Zier & Company, and its officers, and the creditors of said M. Zier & Company, be notified, by mail and by publication, of the time and place of the hearing of this report and petition, at which time said creditors shall appear

and make known their recommendations or objections to the continuance of the operation of the plant herein; that all creditors be required to prove their claims against this estate by filing proof therefor with this Receiver, or by intervening petition in this cause, and that all creditors and persons be enjoined and restrained from prosecuting suits involving this estate in any manner except by intervention in this action; and it prays for all such further and other relief as the circumstances of the case may require, and as to equity belongs.

NEW ALBANY TRUST COMPANY,
By Fred Sauer, *Sec'y.*
Receiver.

STATE OF INDIANA, }
County of Floyd. }

Fred Sauer says he is Secretary of the New Albany Trust Company, and has the active charge of the Receivership of M. Zier & Company, and that the facts stated in the foregoing report and petition are true.

FRED SAUER.

Subscribed and sworn to by Fred Sauer before me this 16th day of January, 1903.

CHARLES B. SCOTT,
Clerk.

By William F. Ruoff,
Deputy.

AND upon the filing of the foregoing Petition and Report, at the said January Term, 1903, of the Floyd Circuit Court on the 16th day of January, 1903, before the Hon. William

C. Utz, Sole Judge among other the following proceedings were had to-wit:—

Joseph T. Ryerson & Son,
vs.
M. Zier & Company.
No. 5575.

This day came the New Albany Trust Company, Receiver of M. Zier & Company and filed an inventory and appraisement and its report and petition herein and said report and petition having been heard, it is now ordered that the same be set for the 24th day of January, 1903, at the hour of 9 o'clock a. m. at the Court Room of this Court to be further heard on the advisability of continuing the operation of the plant of M. Zier & Company and all kindred questions and the Receiver in this cause is now hereby ordered and directed to mail to the defendant M. Zier & Company and its President and Secretary and to all the persons and corporations shown in said report as creditors of said M. Zier & Company, printed notices of the fact that said petition is set for hearing on said date, place and hour, at which time all persons interested in this cause will be heard on the matters embraced in said report and petition.

It is further ordered that the receivership herein be continued and the operation of the plant herein be continued as heretofore ordered until the further order of Court, and said Receiver is ordered and directed to complete the contracts with Grainger & Company and J. B. Speed & Company under the terms and conditions proposed by said Receiver in said report and petition, no action is taken by the Court on the contracts with J. E. & F. Walters and Houston, Stanwood & Gamble Co. as set forth in said report and petition.

And this cause is reversed in all matters for such further order therein as may be deemed necessary."

And afterwards at the said January Term, 1903 of the said Floyd Circuit Court, on the 24th day of January, 1903 the Hon. William C. Utz, Presiding, the following Report and proofs of notice was filed in open Court, to-wit:—

FLOYD CIRCUIT COURT.

"Joseph T. Ryerson & Son,
vs.
M. Zier & Company.

Comes the New Albany Trust Company Receiver herein and files its report of receipts and disbursements made since its last report herein to-wit:

1903 — Receipts.

Jan'y 15th.	Balance		$1,843.82
" 20th.	Todd Obenchain Co.		30.90
			$1,874.72

Disbursements.

Jan'y 16th,	C. I. & L. Ry. Co	$ 17.75	
" "	Hoffman Ahlers & Co	34.62	
" "	Rodenbush & Payne	8.64	
" "	Globe Rolling Mill Co	231.21	
" 17th,	Scully Steel & Iron Co	243.20	
" "	United Gas & Electric Co.	27.00	
" "	Roudenbush & Payne	9.38	
" "	L. Hammersmith	32.73	
" "	J. G. Eury, Bookkeeper	526.84	
" "	" " "	17.05	
" 18th,	W. M. Mix.	15.00	
" "	S. J. Gardner	15.00	
" 20th,	B. O. & S. W. Ry. Co.	32.61	$1,211.03
			$633.69

It also files herewith as a part hereof a copy of a notice which this Receiver in pursuance of the order of Court mailed to M. Zier & Co. and to all the creditors of M. Zier & Co. the same being deposited in the United States Mail on Saturday, January 17th, 1903.

THE NEW ALBANY TRUST COMPANY,
By Fred Sauer, *Secretary.*
Receiver of M. Zier & Co.

Subscribed and sworn to by Fred Sauer this 24th day of January, 1903.

CHARLES B. SCOTT,
Clerk F. C. C

EXHIBIT.

"THE NEW ALBANY TRUST COMPANY,

New Albany, Ind., January 16, 1903.

. . . . . .

Dear Sirs:

You are hereby notified that we on this day filed in the Floyd Circuit Court our report and petition concerning the assets of M. Zier & Co. and indefinite operation of the plant. The report shows the assets are of the value of $28,434.81 and unfinished contracts of the value of about $8,000.00 and contracts on which no work has been done amounting to $11,914.15. On a hearing of the petition the Court fixed the 24th day of January, 1903, at the hour of 9 o'clock a. m. at the Court Room at New Albany, Indiana, for a further hearing of the report and petition on the question of further operation of the plant and all kindred questions at which call all creditors and all persons interested in this cause may be present and be heard.

You are therefore notified to be present in person or by attorney and then be heard.

Respectfully,
THE NEW ALBANY TRUST COMPANY,
Receiver M. Zier & Co.
By Fred Sauer, *Sec'y.*"

AND upon the filing of the foregoing report, etc., at the said January Term, 1903 of the Floyd Circuit Court on the 24th day of January, 1903, before the Hon. William C. Utz, Sole Judge among other the following proceedings were had to-wit:

Joseph T. Ryerson & Son,
vs.
M. Zier & Co.
} No. 5575.

This cause coming on to be heard on the reports and petitions of the Receiver herein, and the several matters involved therein, and it appearing to the Court that all the creditors as shown by the books of the defendant M. Zier & Company had been notified by said Receiver to be present on this day to be heard on said matters and the following creditors being present in person or by attorney to-wit:

By Jewett & Jewett, Attorneys:
Louisville Fire Brick Works.
L. Hammersmith.
F. R. Baker.
New Albany Manufacturing Co.
I. F. Force Handle Co.
Cincinnati Iron Store Co.
Queen City Supply Co.
Gertrude Strobel.
Minnie M. Zier.

Herter & Hester, Attorneys:
Jones & Laughlin Steel Co.
Crucible Steel Co. of America.
Reading Iron Co.
John Schleay, Jr., Co.
Inland Steel Co.
Burtt & Taggart, Attorneys:
E. A. Kinsey Co.
By Stotsenburg & Weathers, Attorneys:
Globe Rolling Mills Co.
New Albany National Bank.
Pittsburg & Supply Co.
Roudenbush & Payne.
By McIntyre, Bulleit & James, Attorneys:
C. U. Williams, agent Pennsylvania Railroad Co.
By C. D. Kelso, Attorney:
United States Tube Co.
Indiana Water Co.
By W. W. & J. R. Watts, Attorneys:
National Foundry and Machine Co.
Chicago Pneumatic Tool Co.
W. B. Belknap & Co.
Ahrens and Ott Mfg. Co.
Jos. T. Ryerson & Son.
A. M. Castle & Co.
Ohio Falls Varnish Co.
Portsmouth Steel Co.
John Finger and Son.
Lewis and Creed.
Louis Bir.

And the following creditors being before the Court by letters filed in this cause to-wit:

The Cincinnati Railway Supply Co.

The Dowerman Rivet and Bolt Mfg. Co.

Edward Kelly Foundry Co.

The Cleveland Steel Company.

And said creditors having entered their appearance and having been heard with respect to the matters herein, it is now ordered and without objection thereto, that the Receiver herein shall pay in full the rent due on the premises on plant of said M. Zier & Co. to the Chicago, Indianapolis & Louisville Railway Co. the lessor of said premises.

The Receiver herein having reported that John E. & Frank Walters have agreed to pay into Court and into the hands of the Clerk of this Court the sum of $900.00 in full of the completion of the contract herein between said Walters and M. Zier & Co. said sum to be retained by said Clerk until such completion and the further order of Court the Receiver herein to deliver by January 28, 1903 the boilers and material to be furnished under said contract and to complete the work under said contract and according to the specifications thereof, within ten days from the date of completion of the brick work, which said Walters are to do to make said work ready for completion by said Receiver, said Walters agreeing that they will not delay the erection of the said brick work to be done for the erection of said boilers. Upon the entry of an order of Court directing said receiver to carry out such agreement, said Walters are to pay said money into Court as aforesaid and shall dismiss certain attachment proceedings they have instituted in Kentucky and cancel and surrender any claim they may have for damages on account of said contract, which may have accrued to this time. It is now ordered and without objection thereto that said agreement be and the same is hereby approved and said receiver is now ordered and directed to carry out the same upon the terms thereof.

It is further ordered by the Court after hearing said creditors in person and by attorney, and it appearing to be the unanimous wish of those present that the Receiver herein shall continue the operation of the plant herein until the further order of the Court and shall proceed to the completion of the unfinished contracts now on hand and the contracts amounting to $11,914.15 as set forth in the receiver's report and petition herein upon which no work or material has been done or furnished and shall accept and do such repair work or small jobs as it may be offered and as it may do, but not to make any new contract or take any other work, which will prolong the operation of said plant beyond the time of two months from this date except upon the further order of this Court. Said receiver is authorized to buy material borrow money or contract other indebtedness necessary for such operation to the extent of but not to exceed the sum of $5,000.00 and is authorized to issue certificates of any such indebtedness and said certificates shall bear interest at the rate of six per cent. per annum from their date until paid and they shall be and remain a first and superior lien upon all the assets in this estate to secure their payment and said receiver shall pay off said certificates from time to time when the funds in hand justify the same. Said receiver shall operate said business on as small expense as may be done and shall retain in the office of said plant one clerk only, at an expense of $4.00 per week unless otherwise ordered by the Court.

It is further ordered that all persons or corporations shown on the books of said M. Zier & Co. as creditors and all others who may be known to said receiver as creditors thereof, shall be notified immediately by said Receiver by mail to file their claims against this estate properly proved according to law, same to be filed with said receiver on or

before the 11th day of May, 1903, and said receiver shall further notify all creditors by publication by three insertions in one or more daily papers published in the City of New Albany, Indiana, to prove and file such claims within said time. And it is now ordered that all creditors and other persons be and they are hereby enjoined and restrained from prosecuting any claim or suit against this estate except by intervention in this cause or by first obtaining leave of this Court.

And this cause is now reserved on all matters for the entry of such orders as may appear to be necessary."

AND afterwards, at said January Term, 1903, of said Floyd Circuit Court on the 14th day of February, 1903, the Hon. William C. Utz, Presiding, the following petition and report was filed in open Court, to-wit:

"FLOYD CIRCUIT COURT.

Joseph T. Ryerson & Son,
Complainant.
vs.
M. Zier & Co.,
Defendant.

PETITION OF NEW ALBANY TRUST CO. CONCERNING PROCEEDINGS IN BANKRUPTCY.

Respectfully represents the New Albany Trust Company, receiver of M. Zier & Co. under order of appointment herein that since its last report herein the following is the status concerning the matters pertaining to this estate, to-wit:

That pursuant to the order of Court herein entered on the 24th day of January, 1903, it has entered upon the ful-

fillment of the contract or agreement between this receiver and John E. and Frank Walters therein set forth, as also with the uncompleted and the new contracts therein ordered and directed to be completed and fulfilled; that while some of the same have been completed, others there are, and particularly said Walters contract, which are in a state of incompletion and upon which this Receiver is now working; that it has in all respects obeyed and is carrying out the provisions of said order. Said order is now referred to as a part hereof in all respects as fully as if copied herein in haec verba.

Petitioner would show to the Court that said order so made part hereof was entered by this Court only after the most careful consideration by this Court, your petitioner and the creditors of said M. Zier & Co. that this petitioner being in some doubt as to what should do or recommend with respect to said estate did on the 16th day of January, 1903 file in this Court, in open Court its report and petition showing among other things the appraisement details and character of the assets of said M. Zier & Co. coming to its hands, and that therein it recommended among other things, that said report and petition be set for a particular day for hearing thereon; that in the meantime said M. Zier & Co. and its officers, and all the creditors of said M. Zier & Co. as shown by the list of creditors then filed, and which list included the Inland Steel Co., John C. Thruston and Dey Time Register Co., be given notice thereof by the United States Mail, so that any and all creditors or persons interested therein should be present and be heard, and make known their recommendations or objections with respect thereto. Said petition and said list are now referred to as part hereof as fully as if copied herein; that on said 24th day of January this petitioner filed its report herein among

other things showing the facts with respect to such notice, filing a copy thereof, and that it had sent such notice by mail deposited in the United States Mails on the 17th day of January, 1903, and such notice was mailed by this Receiver on said day to all the creditors so shown in said list, including said Inland Steel Co., John C. Thurston and Dey Time Register Co. aforesaid.

On the said 24th day of January, 1903 said cause was called by this Court on said report and petition, and there then appeared divers of said creditors in person or by attorney, at said hearing; that said report and said petition was then before said creditors in open Court discussed, under and by which discussion settlement and disposition was made of the divers matters under discussion and set forth in said report and petition and kindred matters therein and there and then appeared the Inland Steel Company and Jacon Herter and George H. Hester as its attorneys, and said Inland Steel Company and said Herter and Hester as such attorneys, entered their appearance as is disclosed by said order dated January 24, 1903 herein, and said attorneys and, especially said Hester as such attorney participated in said proceedings, that said Hester was also attorney for said Walters with respect to the contract between said Walters and said Zier & Co. and this Receiver, and was so present insisting upon its fulfillment and agreeing to its carrying out as provided in said order; that at said hearing, said order of said January 24, 1903 was entered without objection from said Inland Steel Company, John C. Thruston and Dey Time Register Co., or any creditor present in person or by attorney or any creditor notified as aforesaid, or any creditor or person; that at no time has there been objection by any one to the Receivership herein, nor motion of any nature to set aside this Receiver's appointment.

Your petitioner would now show to the Court that among other things said order provided that all creditors and other persons be and they were then and thereby enjoined and restrained from prosecuting any claim or suit against the estate herein except by intervention in this cause, or by first obtaining leave of this Court and thereupon said cause was retained as to all matters for the entry of such orders as may appear to be necessary, and said order appointing this Receiver has never revoked or set aside and same is now in full, force and effect.

The petitioner would now show to the Court that without respect to what has been done herein as herein set forth said Inland Steel Co., John C. Thruston and Dey Time Register Co., have since the entry of said order on January 24th, 1903 as petitioner is informed, believes and alleges, filed a petition in involuntary bankruptcy against said M. Zier & Co. as alleged by them on grounds of bankruptcy as provided by the Act of Congress entitled "An Act to Establish a Uniform System of Bankruptcy Throughout the United States" approved July 1, 1898; that said petition was filed in the District Court of the United States for the District of Indiana, at New Albany, Indiana on the 6th day of February, 1903, that thereafter, to-wit: On February 11, 1903 a supplemental petition was filed, based on said Act of Congress, as amended; that on said February 11, 1903, said petitioner, Inland Steel filed in said Court a petition verified by said Hester in which they set forth the receivership herein, and without showing to that Court all the facts herein, set forth, to-wit: Their notification as to the hearing of said report and petition, the participation of said Inland Steel Company and said Herter and Hester as attorneys in this proceeding, their appearance herein, the consideration of said receivership by said credit-

ors, and the restraining order and injunction herein an order was then obtained therein whereby one Frederick D. Conner was by that Court appointed receiver and directed to take charge of the estate of M. Zier & Co. in bankruptcy and therein this receiver was ordered to deliver up to said Frederick D. Conner as such receiver, the said property and effects of said M. Zier & Co. now in its possession and to refrain from interfering in any way with said Conner's possession as receiver.

Petitioner is further informed, believes and alleges that said Hester as such attorney and said petitioning creditors, said Frederick D. Conner and Henry U. Pettit, the Marshal of said District Court of the United States for the District of Indiana, are now seeking and will seek to disturb this Court's Receiver in its possession and without the order of this Court, and irrespective of the matters herein set forth and endeavoring and will endeavor to take possession thereof and from this receiver.

Petitioner would show that the creditors whose appearance are noted before this Court in the entry of the order herein on January 24, 1903, have claims aggregating about $53,279.51 against the estate herein; that certain creditors whose claims aggregate $11,622.49 have filed their claims with this receiver, thus making a total of $64,902. in amount so filed or appearing; that the total liability of the estate of $76,463.36; that the total number of creditors is 76; that 37 appeared to this action, as appeared by said order and 25 including said Dey Time Register Co. have filed their claims with this receiver for the purpose of participating in this estate making a total of 62 creditors so appearing or filing their claims with this receiver.

Petitioner says that with a view to the observance of that comity existing between the State and the Federal

Courts as defined by the Supreme Court of the United States and the several Federal and State Courts, and with a view to avoiding the clash of jurisdiction herein necessarily to be brought about on the enforcement of said Court's order, this petitioner caused its attorneys to hold conversation over the long distance telephone between New Albany and Indianapolis, Indiana, with the Honorable A. B. Anderson, Judge of said District Court of the United States for the District of Indiana on this 13th day of February 1903, and therein caused said counsel to urge that because thereof said order appointing such receiver should not be enforced until after said matters sould be presented to this Court with the request that this Court direct it and its said attorneys to lay said matters before said, the Honorable A. B. Anderson, Judge of said Court, as this Court might direct, whereupon said Judge requested petitioner's counsel to notify said Hester as such attorney, that said matter might be heard on Monday February 16, 1903 at Indianapolis, Indiana, and that in the meantime the said order appointing said Connor such receiver was not to be enforced; that thereupon petitioners counsel so notified said Hester as such counsel by service of a written notice thereof, a copy of which is filed herewith as part hereof marked "Notice."

Petitioner would further show to the Court that this Court is about to adjourn over to its next term and that the first day thereof will be the 9th day of March 1903; that the order herein above referred to entered on January 24, 1903, directed this receiver to go on with and complete various contracts at that time submitted and discussed; that it has entered upon said work; that the operation of this plant was for the beneficial purpose of this estate; that while it involves much outlay to continue its operation, it has reduced all expenses to the minimum; that the cessation of said

plant means much loss to the creditors of this estate in that it will dispel the organized force of skilled workmen now employed by petitioner; that it will involve this estate in many complicated questions of loss or damage with respect to the fulfillment of the contract which it has so undertaken to fulfill. That it would work great hardship on this receiver and upon this estate to leave it with this Court adjourned and without order and instructions as to what to do; that this Court should so instruct it and order it as to the matter herein and especially for the time between the time of its adjournment and its convention again that this receiver is advised, it is an officer of this Court only, and that it must be ordered and directed by this Court only with respect to the property in its hands.

And so it is that this petitioner would now show that it is advised, believes and alleges:

1. That the injunction and restraining order of this Court herein has been knowingly violated by said Inland Steel Co. and said Dey Time Register Co., and Herter and Hester, attorneys for said Inland Steel Company.

2. That said Inland Steel Company and said Dey Time Register Company and all other creditors are estopped from prosecuting said petition in bankruptcy, and especially said petition seeking to take from this receiver the assets in its hands.

3. That all creditors and others are enjoined and restrained from prosecuting any attempt to take from this receiver any of the assets in its hands as receiver except by leave of this Court on intervention herein.

4. That the record in said District Court of the United States for the District of Indiana does not disclose all the facts of the matters herein; that said Court was not informed as to the injunction restraining order and estoppels by

entries of appearance, participation and otherwise herein occurring and in this petition set forth.

5. That the assets of M. Zier & Co. in the possession of this receiver are in custodia legis; that the parties have submitted to this form; that this Court came into lawful custody thereof, and said several orders and proceedings were entered and had before the institution of said bankruptcy proceedings and attempt to oust this Court and this Receiver therefrom; that because of the respect between the Courts, both State and Federal, for the orders and decisions of each other in said matters and because of the spirit of comity existing between said Courts as fixed and defined by the Supreme Court of the United States, the several Federal and State Courts, had said District Court been advised of the matters herein set forth, said Court would not have entered said order as set forth, or would have so modified said order as to direct said Connor to come to this Court by intervening petition and plead his causes here.

6. That this petitioner believes and therefore, alleges and charges that said District Court under the peculiar circumstances of this case will co-incide with this Court, if it shall deem it wise to enter orders herein specifically enjoining and restraining the said Inland Steel Company, John C. Thruston, Dey Time Register Company and Herter and Hester, attorneys, said Frederick D. Connor, individually and as Receiver and Henry U. Pettit the Marshal of the District Court of the United States for the District of Indiana, from further prosecuting any matters in relation to this estate with respect to the matters herein alleged or the taking of said assets in any manner except by intervention in this action.

The premises considered this petitioner recommends and prays that it be instructed, directed and ordered what

it shall do with respect to the estate in its hands now pending the controversy and adjournment of Court herein; that it shall present the facts in this matter to the said District Court of the United States for the District of Indiana, either by limited or general appearance in said suit instituted by said Inland Steel Company, et al. in bankruptcy; and ask such relief, if any, as this Court may direct; that said Inland Steel Company, John C. Thruston and Dey Time Register Company, said Frederick D. Connor, Receiver and individually and said Henry U. Pettit, Marshal of the District Court of the United States for the District of Indiana be enjoined and restrained from in any suit, summary process or otherwise, or in any manner attempting to or ousting or taking from this Receiver the possession of said estate except by intervention herein and proper orders entered in this cause; that this receiver be directed to continue the operation of said plant as heretofore ordered and to report to this Court any molestation of whatever nature it shall suffer in such operation in violation of such orders.

It prays for such other and further relief as the circumstances of the case may require and as to equity belongs.

W. W. & J. R. WATTS,
Attorneys for Petitioner

Fred Sauer, says he is the Secretary of the New Albany Trust Company, receiver petitioner in the foregoing petition, having in charge the active management of the Trust herein mentioned, and that the statements in the foregoing petition are true.

FRED SAUER.

Subscribed and sworn to by Fred Sauer before me this 14th day of February 1903.

CHARLES B. SCOTT,
Clerk F. C. C."

AND upon the filing of the foregoing petition at the said January Term 1903 of the Floyd Circuit Court, on the 14th day of February 1903, before the Hon. William C. Utz, Sole Judge among other the following proceedings were had to-wit:

Joseph T. Ryerson & Son,
vs.
M. Zier & Co.
} No. 5575.

Comes the New Albany Trust Company, receiver herein and files its petition herein showing to the Court divers matters concerning the filing of a petition in the District Court of the United States for the District of Indiana; by the Inland Steel Company, John C. Thruston and Dey Time Register Company, as creditors of said M. Zier & Co., in involuntary bankruptcy and a petition seeking the appointment of a receiver therein to take charge of the assets in this Court's possession through its receiver herein, whereupon such an order was entered, Frederick D. Connor being named as receiver and being directed to take possession of such assets, and further showing to the Court that the record in said case disclosed the fact that said Court was not fully advised as to the various orders, injunctions, restraining orders, and estoppels by entries of appearance and participation in these proceedings by divers creditors of this estate, including said Inland Steel Company and Dey Time Register Company, petitioning creditors therein, and further showing that because of the immediate adjournment of this Court and its convention not being again had until March 9th 1903, and the operation of the plant herein made by and with the advice of much more than a majority in number and amount of the creditors herein, including said Inland Steel Company, such petitioning creditor in bankruptcy

and this Court now after havig read said petition and having considered the various exhibits referred to in such receiver's petition and the entire record of this cause and being fully advised is of the opinion that had said District Court of the United States for the District of Indiana been fully advised of the divers matters herein occurring it would not have entered such order as has been therein entered: that because of the comity existing between the Courts of this Country, State and Federal, its order would at most have directed any attempt to take the assets herein to be by intervention in this cause and that only, and being of the opinion that said District Court will coincide with these views and a state of necessity for the entry of this order existing, It is now ordered that the Receiver herein conduct the operation of the plant herein as heretofore ordered and directed; that said Inland Steel Company, John C. Thruston and Dey Time Register Company, Frederick D. Connor individually and as receiver and Henry C. Pettit individually and as Marshal of the District Court of the United States for the District of Indiana and all others in any capacity be and are hereby enjoined from in any wise molesting, interfering with or attempting by legal process or otherwise to take possession of the estate of M. Zier & Co. in the hands of this Court through its receiver herein, and in the hands of said receiver until the further order of this Court, and except by intervention in this cause.

And said Receiver is now hereby ordered and directed through its attorney, to proceed to Indianapolis, Indiana, and there by a limited appearance and by protestation against appearance, only, by petition upon such appearance only, lay before said District Court of the United States for the District of Indiana the facts with regard to the matters herein, said injunction, restraining order, and said estoppels and to

suggest to said Court the orders of this Court and the fact that had it been fully informed, as is believed by this Court, its order with respect to the assets herein would at the most have been a direction to make an application to this Court at the proper time and in the proper way for delivery of the said assets to such District Court's receiver or trustee after proper disposition and settlement of the matters herein.

The Court being further advised and on motion of said New Albany Trust Company, receiver, It is ordered that the Inland Steel Company, John C. Thruston and The Dey Time Register Company, be and they are hereby ordered to appear and show cause why they have prosecuted said petition in involuntary bankruptcy why they have filed said petition seeking the appointment of a receiver for the assets of this estate, why they have sought to take from this Court the assets of this estate, why they should not be punished for contempt for disobeying the orders of this Court without first obtaining leave of the Court by petition of intervention or order in this cause. And they are hereby commanded to show such cause on or at the time of the first day of the next term of this Court. And service of a copy of this order upon Jacob Herter and George H. Hester because of their apparent representation of said petitioning creditors and then said co-counsel for the purpose of this show cause order shall be deemed sufficient for the service thereof on all said persons and parties.

And It is further ordered that this Court shall retain such control of said matters as may be necessary for the purpose of the entry of any and all such orders as may be deemed proper and necessary herein and therein. And Jacob Herter and George H. Hester such attorneys now being present in Court and Hester having been heard in opposition to the said petition and having notice of the

entry of this order It is now ordered that no other or further notice hereof need be given the said Inland Steel Company, John C. Thruston and Dey Time Register Co., petitioners in said bankruptcy proceedings. And comes now C. D. Kelso and asks leave of the Court to withdraw as the attorney of record for the following named parties; United Gas and Electric Company, United States Tube Company, Indiana Water Company and Simon David and the Court now permits the said C. D. Kelso to withdraw herefrom."

AND afterwards at the said January Term, 1903 of said Floyd Circuit Court on the said 14th day of February 1903 before the Hon. William C. Utz, Sole Judge among other the following proceeding were had to-wit:

"Joseph T. Ryerson & Son,
vs.
M. Zier & Co. } No. 5575.

Comes now Frederick D. Connor as receiver by George H. Hester his attorney, and by leave and order of the Court and upon his own motion, makes himself a party to this proceeding, and thereupon by leave of the Court files his verified petition showing his appointment as receiver of said M. Zier & Co. by order of the United States District Court for the District of Indiana and praying this Court for an order requiring the said New Albany Trust Company, as receiver of said M. Zier & Co. to turn over and surrender to him said Frederick A. Connor, as receiver in bankruptcy, the property of said M. Zier & Co. of which the said New Albany Trust Company as receiver of said M. Zier & Co. under the orders of this Court is custodian and the matter of said petition is now continued until the next term of this Court.

AND afterwards at Chambers, In Vacation, of the Floyd Circuit Court on the 16th day of February, 1903, before the Hon. William C. Utz, Sole Judge among other the following proceedings were had to-wit:

Joseph T. Ryerson & Son,
vs.
M. Zier & Co. } No. 5575.

Comes now W. W. Watts, attorney for the New Albany Trust Company as receiver of M. Zier & Co. and files before the Judge of the Floyd Circuit Court a written statement which reads in words and figures as follows, to-wit:

"FLOYD CIRCUIT COURT.

STATE OF INDIANA, } *ss.*
Floyd County. }

Joseph T. Ryerson & Son,
Complainant.
vs.
M. Zier & Co.,
Defendant.

STATEMENT AND MOTION BY NEW ALBANY TRUST CO., RECEIVER, AND W. W. WATTS, ITS ATTORNEY.

To the Honorable Judge of the Floyd Circuit Court in Chambers:

Respectfully represents the New Albany Trust Co., receiver herein, and W. W. Watts, one of its attorneys herein, that pursuant to the order of the Court herein entered on Saturday, February 14, 1903, they on the 16th day of February, 1903, at Indianapolis, Ind. filed before the District Court of the United States for the District of Indiana, A. B. Anderson, Judge presiding, a statement of the New Albany Trust Co., receiver under the order of this Court setting forth the facts by protestiation and limited appearance only and showing to said Court the reasons for a modi-

fication of its order theretofore entered appointing a receiver granting an injunction and restraining order and directing its receiver to take possession of the assets of M. Zier & Co.

This receiver and said attorney say they have made diligent effort to carry out the orders of this Court with respect to those matters, but the order of said Court remains as it was and they now move the Court to strike and expunge from the files herein the petition of this receiver filed herein on the 14th day of February, 1903 and the order entered thereon.

NEW ALBANY TRUST CO.,
Receiver.
By W. W. Watts, *Attorney.*"

And the Judge after considering said statement refuses to concur therein, but orders that the matters and facts therein stated show that said W. W. Watts has been guilty of a contempt of Court and it is now ordered that rule be issued against the said W. W. Watts, to appear before the said Judge on the 21st day of February, 1903 at 3 o'clock p. m. and show cause, if any he has, why he should not be punished for contempt.

Dated Feby. 19th, 1903. WILLIAM C. UTZ,
Judge."

AND afterwards, at Chambers, in Vacation of the Floyd Circuit Court on the 19th day of February, before the Hon. William C. Utz, Sole Judge, among other the following proceedings were had, to-wit:

Joseph T. Ryerson & Son,
vs.
M. Zier & Co. } No. 5575.

Comes now the New Albany Trust Company as receiver of M. Zier & Co. and tenders to the Judge of the Floyd Cir-

cuit Court, its written resignation as such receiver, which written resignation reads in words and figures as follows, viz:

"STATE OF INDIANA, }
County of Floyd. } *ss.*

Joseph T. Ryerson & Son, }
vs. }
M. Zier and Company }

To the Honorable, Judge of the Floyd Circuit Court, In Chambers:

The New Albany Trust Company, receiver in the above entitled cause respectfully shows to the Court that in pursuance of the order heretofore made by this Court it appeared by limited appearance and protestation only as ordered by this Court before Judge A. B. Anderson, of Indianapolis, Judge of the United States District Court for the District of Indiana, on Monday the 16th day of February, 1903, and that upon the hearing in that Court this Receiver stated to the Honorable Judge of said United States District Court that it was ready and willing to turn over to the receiver appointed by the Honorable Federal Court in bankruptcy proceedings, of M. Zier and Company, then pending in said Court the property and assets of said M. Zier and Company in the hands of this receiver, and this Receiver further states that it has not yet been able to make up its accounts as receiver as to the receipts and disbursements, but that it is now preparing the same to be submitted to this Court; but that it is ready to turn over to Frederick D. Connor, the receiver appointed by the United States District Court in bankruptcy all of the property of the said M. Zier & Company; and this receiver now prays for an order of this Court authorizing it to turn over to said Frederick D. Connor,

the property of said M. Zier and Company, now in its hands together with any balance in cash which may remain after such statement of its accounts shall be made up and presented and that upon delivering said property to said Frederick D. Connor, receiver aforesaid, it be discharged from all further liability for or on account of said property or assets of said M. Zier and Company so turned over to such Connor as such receiver.

This receiver further asks that upon making up and presentation of its accounts for allowance to this Court, that it be allowed to resign as Receiver of the said M. Zier & Company, and that upon the approval of its accounts its said resignation be accepted by this Company, and that it be fully and finally discharged as such receiver. All of which is respectfully submitted.

THE NEW ALBANY TRUST COMPANY,
By Henry E. Jewett,
Vice-President.

Henry E. Jewett being sworn on his oath, says: He is the Vice-President of the New Albany Trust Company and makes this affidavit on behalf of said Company; that the statements contained in the foregoing petition are true in substance and fact as he verily believes.

HENRY E. JEWETT.

Subscribed and sworn to before me this 19th day of February 1903. CHARLES B. SCOTT, *Clerk*,
By William F. Ruoff, *Deputy*."

And the Judge after reading said tender of resignation holds that the matters therein set forth show that said Receiver is in contempt of Court, and the Judge orders that a rule issue at once against said Receiver to appear before the undersigned Judge on the 21st day of February 1903 at

3 o'clock p. m. and show cause, if any it has or can, why it should not be punished for contempt of Court.

WILLIAM C. UTZ,

Dated Feby. 19, 1903. *Judge.*"

AND afterwards in Vacation, at Chambers of the Floyd Circuit Court on the 20th day of February 1903, before the Hon. William C. Utz, Sole Judge among other the following proceedings were had to-wit:

IN VACATION.

"Joseph T. Ryerson & Son,
vs.
M. Zier & Co. } No. 5575

Comes now the plaintiff by W. W. Watts, its attorney, and comes also the New Albany Trust Company, as Receiver in the above entitled cause; comes also the United States Tube Company, by D. A. Saches, its attorney, and files before the Judge of this Court its verified statement, which reads in words and figures as follows to-wit:

"STATE OF INDIANA }
County of Floyd. } *ss.*

Before Honorable William C. Utz, Judge thereof in Vacation:

Joseph T. Ryerson & Son,
vs.
M. Zier & Co.

IN THE MATTER OF THE RECEIVERSHIP OF SAID DEFENDANT M. ZIER & CO., NEW ALBANY TRUST COMPANY, RECEIVER.

Comes now the United States Tube Company by D. A. Sachs, its attorney, and respectfully represents to the Court,

that on the 19th day of February 1903, the said New Albany Trust Company as such Receiver of said M. Zier & Co. did wrongfully, unlawfully and without leave of this Court turn over and surrender the possession of the M. Zier & Co.'s boiler plant located at the Northeast corner of Upper First or Pearl and Oak streets in the city of New Albany, Indiana to one Frederick D. Connor, who is acting as receiver in bankruptcy claiming to have been appointed by the District Court of Indiana, sitting in bankruptcy, and that said New Albany Trust Company, as such receiver of said M. Zier & Co. is now threatening to and will, unless restrained by order of this Court turn over to said Frederick D. Connor as such receiver in bankruptcy, all the other assets of said M. Zier & Co. remaining in its hands as such Receiver.

Wherefore your petitioner prays that the said New Albany Trust Company, as such receiver, be cited to appear before your Honor in Chambers, at 3 o'clock p. m. of this the 20th day of February 1903 and show cause, if it any have or can, why it should not be punished for contempt of Court, and the undersigned further prays that if this Court finds that said receiver has violated the orders of this Court as above represented, that it be removed from its office as such receiver, and a successor immediately appointed, and that said receiver be required to file its account immediately and to turn over to its successor all of the property it now has in its hands as such receiver belonging to said M. Zier & Co. and your petitioner further prays for such other orders as the Court may deem right and proper in the premises.

Respectfully submitted,

UNITED STATES TUBE COMPANY,

By D. A. Sachs,

Its Attorney.

D. A. Sachs, being first duly sworn upon his oath, says that the matters and facts as set forth in the above and foregoing petition are true as he verily believes so help him God.

D. A. SACHS.

Subscribed and Sworn to before me this 20th day of February 1903.

BERTHA L. SCOTT,

[SEAL.] *Notary Public.*

My commission expires January 12th, 1905."

And the application of said receiver to be permitted to resign as such is now disallowed by the Judge of this Court for the reason that said receiver in its said written tender of resignation openly and wilfully shows to the Court that it has violated the trust reposed in it by the Judge of this Court, and has wrongfully, unlawfully and without leave or permission of the Judge of this Court or said Court, surrendered the possession of the property of which it is custodian to Frederick D. Connor, and now the Judge of this Court, upon his own motion and because of the open contempt of said receiver for the orders, judgment and process of this Court does now order and direct, that said receiver be and it is hereby removed from its trust. And it is now ordered to immediately account to the Court for all of the assets of said M. Zier & Co. which came into its hands as such receiver, and now the Judge of said Floyd Circuit Court, upon his own motion appoints Charles D. Kelso as receiver of said M. Zier & Co. as successor to New Albany Trust Company; And the Judge of this Court now orders and directs that said Charles D. Kelso immediately qualify as such receiver and that he give bond in the sum of Thirty Thousand Dollars ($30,000.00) to the approval of the Judge of

the Floyd Circuit Court and that said receiver is now ordered by the Judge of this Court to immediately upon his qualification, demand of said New Albany Trust Company and of said Frederick D. Connor the immediate possession of the property of said M. Zier & Co. which came into the hands of said New Albany Trust Company as the receiver herein and if the said New Albany Trust Company or said Frederick D. Connor shall fail and refuse to immediately turn over and surrender the possession of said assets to said receiver, the Judge of this Court now orders and directs that said receiver immediately report such refusal and failure to surrender such assets to this Honorable Judge for further action in the premises.

And now comes Charles D. Welso and files with the Clerk of this Court his bond in the sum of Thirty Thousand (30,000.00) Dollars conditioned according to law with the United States Fidelity and Guaranty Company of Baltimore, Maryland as surety thereon, which bond is now approved by the Judge of this Court and the said receiver thereupon takes his oath of office. And the Judge of this Court now orders and directs that said receiver proceed to execute the duties of his trust in the same manner and being invested with the same powers as the New Albany Trust Company was heretofore invested, the present receiver being authorized to carry out all the orders of the Court heretofore made in this cause.

WILLIAM C. UTZ,
Judge.

Dated at New Albany, Ind.
February 20th, 1903.

AND afterwards at Chambers, in Vacation of the Floyd Circuit Court on the 20th day of February 1903 before the

Hon. William C. Utz, Sole Judge among other the following proceedings were had to-wit:

Joseph T. Ryerson & Son,
vs.
M. Zier & Co.

IN THE MATTER OF THE RECEIVERSHIP OF SAID DEFENDANT M. ZIER & CO., CHARLES D. KELSO, RECEIVER.

Comes now Charles D. Kelso, receiver of M. Zier & Co. and files before the Judge of the Floyd Circuit Court of Indiana in Chambers and in Vacation his verified report which reads in words and figures as follows to-wit:

Before the Honorable William C. Utz, Judge of Floyd Circuit Court:

"STATE OF INDIANA,
County of Floyd. } ss.

Joseph T. Ryerson & Son,
vs.
M. Zier & Co.

IN THE MATTER OF THE RECEIVERSHIP OF M. ZIER & CO., CHARLES D. KELSO, RECEIVER.

Comes now Charles D. Kelso, as receiver of M. Zier & Co. and respectfully shows to the Judge of this Court, that in obedience to the orders of this Honorable Judge he called upon the New Albany Trust Company and demanded of it the possession of all the assets of said M. Zier & Co., which came into its hands as receiver thereof, and that said Trust Company failed and refused to surrender the possession thereof for the reason that it had turned over the plant of

M. Zier & Co. located on Pearl and Oak Streets in the City of New Albany, Indiana, to Frederick D. Connor and that for the other assets of said Company it intended to account forthwith to the Honorable Judge of this Court. Thereupon the undersigned as receiver of said M. Zier & Co. called upon said Frederick D. Connor and demanded of him the possession of all the property of said M. Zier & Co. which had been wrongfully turned over to him by said New Albany Trust Company and that said Frederick D. Connor failed and refused to turn the same over to the undersigned.

Wherefore the undersigned prays for such other orders and decrees in the premises as the Judge In Vacation may deem just and proper.

Respectfully submitted,

CHARLES D. KELSO,

Receiver of M. Zier & Co.

Subscribed and sworn to before me this 20th day of February 1903.

CHARLES B. SCOTT, *Clerk, F. C. C.*

By William F. Ruoff, *Deputy.*"

And the Court having considered said report and being fully advised in the premises, finds that Frederick D. Connor has and is intermeddling with the assets of said estate and is interfering with the possession and control of said assets by the receiver of this court.

It is therefore considered, ordered and adjudged by the Judge of said Court, that a summary writ be issued in this cause directed to the Sheriff of this County, requiring the said Sheriff to immediately seize and to take into his possession and deliver over to Charles D. Kelso, receiver of M. Zier & Co. all the property of said M. Zier & Co., which said Frederick D. Connor now has in his possession, which con-

sists of the plant of M. Zier & Co. located at the corner of Pearl and Oak Streets in the City of New Albany, Indiana, including all tools and machinery, manufactured iron, scrap iron, appliances and other personal property therein situated, books, papers, accounts and choses in action, and that said Sheriff of said County execute said writ forthwith and upon the execution of said writ make his return to the Judge of the Honorable Floyd Circuit Court forthwith.

Dated at New Albany, Ind., February 20, 1903.

WILLIAM C. UTZ,
Judge."

STATE OF INDIANA, }
County of Floyd. } *ss.*

I, Charles B. Scott, Clerk of the Floyd Circuit Court within and for said County and State do hereby certify that the within and foregoing is a full, true and complete Copy of Entries of Record and Orders of Court together with the papers and pleadings set out and filed therein, in the receivership case of Joseph T. Ryerson and Son *versus* M. Zier & Company, as the same appears of record and on file in my office.

WITNESS my hand and the seal of said Court hereto affixed at New Albany, Indiana this 4th day of March, 1903.

CHARLES B. SCOTT,
Clerk Floyd Circuit Court.

[SEAL.]

STATE OF INDIANA, }
Floyd County. } *Sct.*

I, William C. Utz, Judge of the Floyd Circuit Court, in and for said County and State, do hereby certify that

Charles B. Scott, is the Clerk, and Keeper of the Seal thereof, that his attestation to the foregoing certificate is in due form of Law and that his genuine signature is thereto affixed.

WITNESS MY HAND and the seal of said Court hereto affixed this 4th day of March, 1903.

WILLIAM C. UTZ,
Judge Floyd Circuit Court.

[SEAL.]

STATE OF INDIANA, } *Sct.:*
Floyd County. }

I, Charles B. Scott, Clerk of the Floyd Circuit Court, in and for said County and State, do hereby certify that William C. Utz is the Judge of said Floyd Circuit Court, that his attestation to the foregoing Certificate is in due form of Law and that his genuine signature is thereto affixed.

WITNESS MY HAND and the seal of said Court hereto affixed this 4th day of March, 1903.

CHARLES B. SCOTT,
Clerk Floyd Circuit Court.

[SEAL.]

Exhibit B.

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF INDIANA.

In Bankruptcy. February 6, 1903.

In the matter of M. Zier & Company, Alleged Bankrupt. } No. 37. In Bankruptcy.

Come now the Inland Steel Company and other, by Ringer, Wilhartz & Louer, their solicitors, and file a petition to have M. Zier & Company adjudged a bankrupt. And said petition is in the words following, to-wit:

The petition of Inland Steel Company, a corporation, John C. Thurston and John Dey, doing business as Dey Time Register Company, respectfully represent that M. Zier & Company, a corporation, has for the greater portion of six months next preceding the date of the filing of this petition, had its principal place of business at New Albany in the State of Indiana in the County of Floyd and State and District aforesaid, and owes debts to the amount of over seventy-five thousand dollars; that your petitioners are creditors of M. Zier & Company, and have provable claims amounting in the aggregate, in excess of the securities held by them, to over Five Hundred Dollars; that the nature and amount of your petitioners' claims are as follows:

Said Inland Steel Company, a corporation, is a creditor of M. Zier & Company, a corporation, in the sum of Nine Hundred and Thirty-five Dollars, evidenced by the notes of said M. Zier & Company, payable January 20th, 1903, given for goods, wares and merchandise sold and delivered.

Said John C. Thurston is a creditor of said M. Zier & Company in the sum of Fifteen Dollars for goods, wares and merchandise sold and delivered.

Said John Dey, doing business as Dey Time Register Company, is a creditor of M. Zier & Company in the sum of One Hundred Dollars, evidenced by the note by the note of said M. Zier & Company, given for goods, wares and merchandise, sold and delivered.

Your petitioners further represent that M. Zier & Company is insolvent; that within four months next preceding the date of the filing of this petition in bankruptcy, the said M. Zier & Company committed acts of bankruptcy as follows:

First. Your petitioners allege upon information and belief that said M. Zier & Company did heretofore, to-wit: on divers dates within four months last past, while insolvent, transfer to the firm of Joseph T. Ryerson & Son of Chicago, and to Minnie M. Zier of Minneapolis, Minnesota, creditors of said M. Zier & Company, certain portions of the property of the said M. Zier & Company, with intent to prefer said creditors over and above the other creditors of said M. Zier & Company, the aggregate value of said property amounting at least to the sum of Five Hundred Dollars.

Second. That the said M. Zier & Company did on divers dates, within four months last past, while insolvent, transfer divers other portions of its said property to divers other persons who were then and there creditors af said M. Zier & Company, and especially to Minnie M. Zier, with intent to prefer such persons over and above the other creditors of M. Zier & Company.

Your petitioners further represent that said M. Zier & Company is engaged in the business of manufacturing boilers and kindred articles in the city of New Albany, Indiana, and has on hand a large stock of merchandise,

machinery and tools, and a large number of outstanding accounts; that under certain proceedings in a State Court a receiver has been appointed of the assets of said corporation, M. Zier & Company and is attempting to collect the assets of said estate, and incurring petty expenses in and about said estate, which must be borne by the creditors thereof; and your petitioners aver that it is absolutely necessary for the preservation of said estate of said M. Zier & Company, for the benefit of all of its creditors, that a Receiver in bankruptcy be appointed herein forthwith; that the total value of said assets of said M. Zier & Company does not exceed in value the sum of Thirty Thousand Dollars.

WHEREFORE your petitioners pray that a Receiver in Bankruptcy may be appointed herein by this Honorable Court, with the usual powers of Receivers in Bankruptcy in similar cases, and that service of this petition, with a subpœna, may be made upon said M. Zier & Company, as provided by the Acts of Congress relating to bankruptcy, and that said M. Zier & Company may be declared by this Court to be a bankrupt within the purview of said Acts

INLAND STEEL COMPANY,
JOHN C. THURSTON,
JOHN DEY, doing business as the
Dey Time Register Company,
By Andrew J. O'Donnell, their
duly authorized agent and
Attorney in Fact.

UNITED STATES OF AMERICA, }
District of Indiana. }

STATE OF ILLINOIS, }
County of Cook. } *ss.*

Andrew J. O'Donnell, being first duly sworn on oath deposes and says that he is the duly authorized agent and attorney in fact of the above named petitioners; that he has read the foregoing petition by said petitioners subscribed, and knows the contents thereof, and that same is true in substance and in fact, except as to the matters therein alleged to be upon information and belief, and as to those matters he believes it to be true.

Said affiant makes this affidavit as the duly authorized agent and attorney in fact of all the petitioning creditors herein.

ANDREW J. O'DONNELL.

Subscribed and sworn to before me this Fourth day of February A. D. 1903

HELEN WEIL,
[SEAL.] *Notary Public.*

And thereupon the following proceedings in the above entitled matter were had to-wit:

Upon the consideration of the petition of Inland Steel Company, John C. Thurston and John Dey, doing business as the Dey Time Register Company that M. Zier & Company be declared a bankrupt, it is ordered that the said M. Zier & Company do appear at this court, as a court of bankruptcy, to be holden at New Albany, in the District aforesaid, on the 28th day of February, 1903, at 9 o'clock in the forenoon

and show cause, if any there be, why the prayer of said petition ought not to be granted; and

It is further ordered that a copy of said petition, together with a writ of subpoena be served on said M. Zier & Co., by delivering the same to it personally or by leaving the same at its last and usual place of abode in said district, at least five (5) days before the day aforesaid.

And thereupon there issued out of the office of the clerk of said court a subpoena in the above entitled matter, in the words following, to-wit:

UNITED STATES OF AMERICA, }
District of Indiana. } *ss.*

To M. Zier & Company in said District Greeting:

For certain causes offered before the District Court of the United States of America, within and for the District of Indiana, as a court of bankruptcy, we command and strictly enjoin you, laying all other matters aside and notwithstanding any excuse that you personally appear before our said District Court to be holden at New Albany, in said District, on the 28th day of February, A. D. 1903, to answer a petition filed by the Inland Steel Company, John C. Thurston and John Dey, doing business as Dey Time Register Company in our said court praying that you may be adjudged a bankrupt and to do further and receive that which our said District Court shall consider in this behalf and this you are in no wise to omit under the pains and penalites of what may befall thereon.

Witness the Honorable A. B. Anderson, Judge of said Court, and the seal thereof, at New Albany, this 12th day of February, A. D. 1903.

NOBLE C. BUTLER, *Clerk*,
By George B. Cardwill,
Deputy Clerk.

Which said subpoena was afterwards, to-wit: on the 19th day of February, 1903, returned into the office of the clerk of said court, with the following return of the marshal endorsed thereon, to-wit:

I received this writ at Indianapolis Feb. 17, 1903, and on same day I served on the within named M. Zier & Company by reading to and in the hearing of Michael Zier Vice President of said company and handing him a true copy of this writ and at same time and place I delivered to him a copy of petition in Bankruptcy, he being the highest officer of said Company found in my district, at New Albany, Floyd County, Indiana. H. C. PETTIT,

U. S. Marshal,

By Alonzo Boyd,

Deputy.

And afterwards, to-wit: upon the 11th day of February, 1903, the Inland Steel Company, by its solicitors, filed its petition in the above entitled matter, in the words following, to-wit:

Your petitioner, Inland Steel Company, respectfully represents that it is a corporation organized under and by virtue of the laws of the State of Illinois and is a resident and citizen of the city of Chicago and State of Illinois. Your petitioner further represents that it is a creditor in amount of Nine Hundred Thirty-five Dollars ($935.) of M. Zier & Company alleged bankrupt, a corporation which has its principal place of business at the city of New Albany, County of Floyd, in the State of Indiana; that a petition has been filed by your petitioner and two other creditors to have said company adjudged a bankrupt which said petition was filed in this court on the 6th of February, A. D. 1903. That it is alleged in said petition that Joseph T. Ryerson & Son and

other creditors therein mentioned have received certain preferences from said alleged bankrupt within four months prior to the filing of said petition, contrary to the statute in such case made and provided, while said bankrupt was insolvent; that at the instance of said Joseph T. Ryerson & Son a receiver has been appointed by the Floyd Circuit Court of Floyd County, Indiana, to take charge of the assets of said alleged bankrupt; that the New Albany Trust Company is the receiver so appointed and that Henry E. Jewett, who is the attorney for said M. Zier & Company is also the Vice President of said New Albany Trust Company; that said receiver is now running the business of M. Zier & Company and is completing certain contracts and for that purpose has employed a large number of men in the manufacturing establishment of said M. Zier & Company and has placed in charge of said plant one Michael Zier, who is the Vice President and Treasurer of said alleged bankrupt; that said Michael Zier is wholly incompetent for said business, that he is wholly unfamiliar with bookkeeping and necessary office work which is essential to the safe conduct of said business, and your petitioner avers that if said receiver is permitted to remain in charge that it would result in injury and detriment of such of the general creditors of said M. Zier & Company who are entitled to participate in said bankrupt estate.

Your petitioner further states that W. W. and J. R. Watts, Attorneys at Louisville, Kentucky, are the attorneys for said Joseph T. Ryerson & Son in said proceedings wherein said New Albany Trust Company was appointed receiver and that said W. W. and J. R. Watts are also the attorneys for said receiver, and your petitioner fears that said receiver is friendly to said Joseph Ryerson & Son and to said alleged bankrupt to the detriment of the creditors at large of the said alleged bankrupt.

Your petitioner further alleges that it is absolutely necessary for the preservation of said estate for the benefit of all of the creditors who shall be entitled to participate therein that a receiver in bankruptcy be appointed herein forthwith to take charge of all of the assets of such alleged bankrupt and administer the same under the directions of this honorable court with the usual powers of receivers in such cases. Wherefore your petitioner prays that a receiver in bankruptcy be appointed forthwith and that such other and further orders be entered herein as to your honor shall seem meet and proper.

INLAND STEEL COMPANY,
By William Wilkartz its duly authorized agent and attorney in fact.

UNITED STATES OF AMERICA,
District of Indiana.
STATE OF INDIANA,
County of Marion. } *ss.*

William Wilhartz being first duly sworn on oath deposes and says that he is the duly authorized agent and attorney in fact in this behalf of the above named petitioner. That he has read the above and foregoing petition by said petitioner subscribed and knows the contents thereof and that said petition is true in substance and in fact except as to the matters therein alleged to be upon information and belief and as to those matters, this affiant, believes them to be true.

Said affiant makes this affidavit as the duly authorized agent and attorney in fact of said petitioner herein.

WILLIAM WILHARTZ.

Subscribed and sworn to before me this 7th day of February, A. D. 1903. M. H. PEACOCK,
Notary Public.

Commission expires April 19, 1906.

And afterwards, to-wit: upon said 11th day of February, 1903, before the Honorable Albert B. Anderson, judge of said court, the following further proceedings in the above entitled matter were had, to-wit:

Comes now the Inland Steel Company, petitioner in bankruptcy herein, which having filed its petition to have M. Zier & Company declared a bankrupt, now files its verified petition alleging that an emergency exists for the immediate appointment by the court of a Receiver herein, to take charge of the property and effects of said M. Zier & Company pending the hearing of said petition and the appointment of a trustee in bankruptcy herein. And the court being advised after due consideration, now finds that the prayer of said petitioner ought to be granted and that a Receiver ought to be appointed to take charge of the property and effects of said M. Zier & Company, previous to the hearing of said petition and the appointment of a trustee herein.

It is therefore considered and ordered by the court that Frederick D. Connor be and he is hereby appointed as receiver herein of the property of said M. Zier & Company, with authority to take charge and possession of all the same, and particularly the goods, wares and merchandise, books, papers and effects, of or belonging to said M. Zier & Company, located at the city of New Albany, Floyd County, Indiana, and now in the hands of the New Albany Trust Company as receiver of said M. Zier & Company appointed by the Floyd Circuit Court, of Floyd County, Indiana. And said Receiver is ordered and directed to take into his possession the sheet iron and boiler manufacturing plant in said city of New Albany, together with all the tools, machinery, appliances, material and finished products within and about said plant at said city of New Albany, which plant is located at the corner of Pearl and Oak Streets

of said city, and all other property of said M. Zier & Company wheresoever found and situated.

It is further ordered and adjudged by the court that the New Albany Trust Company be and it is hereby required to deliver up to said Frederick D. Connor, as Receiver, all the said property and effects of said M. Zier & Company now in its possession and to refrain hereafter from interfering in any way with the said Receiver's possession and control of the same.

It is further ordered that before entering upon the duties of his said trust herein, the said Frederick D. Connor shall execute to the clerk of this court, and file with the clerk of this court, a bond and sureties to the approval of this Court in the sum of Ten Thousand Dollars (10,000) for the faithful discharge of his duties as such Receiver and take the oath required by law of said office.

And afterwards, to-wit: upon said 11th day of February, 1903, The Inland Steel Company, by George H. Hester, its solicitor, filed its supplemental petition herein, in the words following, to-wit:

The petitioner herein, the Inland Steel Company, for further and supplemental petition herein, and as additional acts of bankruptcy committed by the said M. Zier & Company avers:

That on or about the 30th day of December, 1902, and previous to the filing of the original petition herein, on the 6th day of February, 1903, the said M. Zier & Co. was made the defendant in an action brought in the Floyd Circuit Court, in Floyd County, Indiana, by Joseph T. Ryerson & Son, in which the said Joseph Ryerson & Son prayed for a Receiver to take charge of the property and effects of the said M. Zier & Company; that the said M. Zier & Co. upon the filing of said action immediately appeared thereto waiv-

ing services of summons therein and consented to the appointment by the Floyd Circuit Court of the New Albany Trust Company as the receiver of its property and manufacturing establishment; that the said receiver was thereupon so appointed by the Floyd Circuit Court, and immediately took charge of all the property of said M. Zier & Co., and ever since said time said New Albany Trust Company as such receiver has been in complete charge of said property operating the same by the consent of said M. Zier & Co., and under orders of the Floyd Circuit Court; that said New Albany Trust Company as such receiver is represented by W. W. & J. R. Watts, Attorneys at Law, of Louisville, Ky., who are also the attorneys for the said Jos. T. Ryerson & Son, and who are procuring orders from the Floyd Circuit Court for the government of the matters of the said receiver; that said receiver is now under the orders of said court operating the manufacturing plant and boiler works of said M. Zier & Co. at the city of New Albany, and the petitioner fears that he is doing so in the interest of the said Jos. T. Ryerson & Son, and against the interest of the other creditors herein. That said receiver was appointed and put in charge of the property of the said M. Zier & Co. by the said Floyd Circuit Court because of the gross insolvency of the said M. Zier & Co.

INLAND STEEL CO.,
By George H. Hester,
their attorney.

STATE OF INDIANA, }
County of Marion. } *ss.*

George H. Hester being duly sworn on his oath says that matters stated in the foregoing petition are true as he verily believes.

GEORGE H. HESTER.

Subscribed and sworn to before me this 11th day of February, 1903.

NOBLE C. BUTLER,
Clerk of the U. S. District Court.

And afterwards, to-wit: on the 17th day of February, 1903 before the Honorable Albert B. Anderson, Judge of said court, the following further proceedings in the above entitled matter were had, to-wit:

This cause coming on now to be heard upon the petition of Frederick D. Connor, filed herein on the 16th day of February, A. D. 1903, for the instruction of the court concerning the property and assets of said M. Zier & Company, which are now in the possession of the New Albany Trust Company, as receiver of the Floyd Circuit Court, in a suit therein pending against said M. Zier & Company, because of their insolvency; and the petitioning creditors in this cause and said Connor, receiver as aforesaid, being now present and represented by George H. Hester and William Wilhartz, their solicitors, and said New Albany Trust Company, receiver as aforesaid, being now present and represented by Henry E. Jewett, its Vice President, and by William W. Watts, its solicitor, and after argument by counsel, the said New Albany Trust Company, as receiver of the Floyd Circuit Court, by its said Vice President, having voluntarily offered and agreed, by and with the consent and approval of said William W. Watts, its solicitor in open court, to surrender full and immediate possession and control of the property and assets of said M. Zier & Company, in its possession or under its control, as receiver of the Floyd Circuit Court, to said Connor, as receiver of this court, upon the presentation by him to said New Albany Trust Company of a certified copy of the order for his

appointment as such receiver heretofore made by this court. It is now hereby ordered by the court that said Connor receiver as aforesaid, forthwith present a certified copy of the order for his appointment as such receiver to the said New Albany Trust Company, and immediately thereupon take full possession and control of the property and assets of said M. Zier & Company that are now in the possession or under the control of said New Albany Trust Company as receiver of the Floyd Circuit Court.

And afterwards, to-wit: on the 21st day of February, 1903, Frederick D. Connor Receiver of said M. Zier & Company, filed his petition herein, in the words and figures following, to-wit:

The undersigned, Frederick D. Conner, heretofore appointed as receiver, by this court, to take charge of the property and effects of the said M. Zier & Company, respectfully shows to the court:

That subsequent to the order made by the court herein, on the 17th day of February, 1903, directing the petitioner as receiver to present a certified copy of said order for his appointment as such receiver to the New Albany Trust Company, and immediately thereupon take full possession and control of the property and assets of M. Zier & Company, then in the possession and under the control of the said New Albany Trust Company, as receiver of the Floyd Circuit Court, and in obedience to the terms of said order, the said petitioner did on the 19th day of February, 1903, present to the New Albany Trust Company a certified copy of the said order for his appointment as such receiver, and demanded of said New Albany Trust Company as receiver that it turn over to him the full possession and control of all the property and assets of M. Zier & Company then in its possession as receiver of the Floyd Circuit Court; that

thereupon the said Trust Company, by and through Henry E. Jewett, its vice-president, submitted to the petitioner a certified copy of a petition filed by said receiver before the Floyd Circuit Court in chambers, stating that it was ready and willing to turn over to the petitioner the property and assets of said M. Zier & Company in its hands as receiver and further stating that it had not yet been able to make up its accounts as receiver, and praying for an order of said court authorizing it to turn over to this petitioner the property and assets of said M. Zier & Company now in its hands, together with any balance in cash which might remain after such statement of its accounts shall be made up and settled, and asking leave of court to resign as receiver of said M. Zier & Company; which said certified copy of petition is filed with this petition marked Exhibit "A," and made a part hereof; that said New Albany Trust Company, by said Henry E. Jewett, its vice-president, delivered to this petitioner a communication asking that the petitioner defer action until the said New Albany Trust Company could render its accounts and have the same passed on by the Floyd Circuit Court.

The petitioner further represents that he thereupon declined to grant further time, but demanded immediate possession of all the property and assets of said M. Zier & Company in the hands of said New Albany Trust Company, as receiver, and that the said New Albany Trust Company by said Jewett, its vice-president immediately turned over to this petitioner the custody of the building and plant of the said M. Zier & Company, within which is contained all of the property of said M. Zier & Company, excepting certain books and cash belonging to it; that thereupon the petitioner immediately proceeded to take possession of the tools, machinery, appliances, assets and all the property

contained in the manufacturing plant of said M. Zier & Company, which this petitioner believes embraced all of the property of said M. Zier & Company, excepting said books and cash in the possession of said New Albany Trust Company, receiver; that the petitioner thereupon put in charge a day-watchman to hold possession of said property during the day and a night-watchman to hold possession thereof during the night, and so retained possession of said plant until the 20th day of February 1903, at about 7.30 P. M.

The petitioner further says that on the 20th day of February 1903, at about 7.00 P. M. possession of said manufacturing plant and all the property of said M. Zier & Company was demanded of him by Charles D. Kelso, of New Albany, Indiana, as receiver appointed by the Floyd Circuit Court, in place of the New Albany Trust Company, then removed as receiver of said M. Zier & Company; that said demand was refused by this petitioner; that thereupon the petitioner was served by Raymond J. Morris, sheriff of Floyd County, Indiana, and Claude Citizen, Deputy Sheriff of said Floyd County, with a certified copy of on order of the Floyd Circuit Court made in the matter of the receivership of M. Zier & Company, pending before it, a copy of which is filed herewith marked Exhibit B and made part hereof; that at the same time the petitioner was served with a writ issued by the Floyd Circuit Court on the 20th day of February, 1903, to the Sheriff of Floyd County requiring him to forthwith take from the petitioner possession of the boiler plant of M. Zier & Company, together with all the tools, machinery, appliances, books, papers, accounts, choses in action and all other property belonging to said M. Zier & Company and finally the premises of said M. Zier & Company, at its plant in the City of New Albany, Indiana, a copy of which order is filed herewith marked Exhibit C, and made part hereof.

The petitioner further says that thereupon the said Raymond J. Morris, sheriff of said County of Floyd, forcibly took possession, from this petitioner and his agents and employes in charge of said manufacturing plant of said M. Zier & Company, of said property and assets of M. Zier & Company and delivered the same over to Charles D. Kelso, appointed as receiver of said property by the Floyd Circuit Court as aforesaid; that thereupon said Charles D. Kelso immediately took possession of said plant and of such property, and that he, the said Kelso, together with his agents and employes, are now in the possession of the same and restraining this petitioner from the possession thereof and the exercise of any authority over the same.

That this petitioner believes the above stated proceedings were procured to be had by William W. Watts, Esq., of Louisville, Ky., who during the continuation of the New Albany Trust Company, as receiver of M. Zier & Company, represented said Trust Company as such; that said Charles D. Kelso is now represented by one D. A. Sachs, Esq., of Louisville, Ky., an attorney-at-law, and that the petitioner believes that said Sachs also assisted in procuring the orders of the said Floyd Circuit Court above set out, and the petitioner further says that he verily believes the forcible removal of said property from his possession and control as receiver appointed by this court as aforesaid, was brought about by the joint action and efforts of said Charles D. Kelso, as receiver, and Charles D. Kelso, individually, and William W. Watts, as attorney for said New Albany Trust Company, and D. A. Sachs, attorney for said Charles D. Kelso, receiver.

Wherefore the premises being considered, the petitioner prays the court that the said Charles D. Kelso, as receiver of said M. Zier & Company, and Charles D. Kelso, indi-

vidually, Raymond J. Morris, as sheriff of said Floyd County, Indiana, and Raymond J. Morris, individually, Claude Citizen, as deputy sheriff of said Floyd County, and Claude Citizen, individually, Thomas Smithwick, as custodian of said plant of M. Zier & Company, and Thomas Smithwick, individually, William W. Watts, as attorney for said New Albany Trust Company, and D. A. Sachs, as attorney for said Charles D. Kelso, Receiver, be enjoined and restrained from in any manner taking or keeping from the possession of this petitioner said property and estate of said M. Zier & Company; that they may be required and directed to immediately redeliver to this petitioner as such receiver said property and estate so unlawfully taken from them, and that they may be cited to appear before this court at a time fixed by this court and show cause why they should not be punished for contempt for the violation of the orders of this court heretofore made herein.

And the petitioner further prays for directions as to what he shall do with respect to said property.

FREDERICK D. CONNER.

STATE OF INDIANA, }
County of Marion. } *ss.*

Frederick D. Conner, being duly sworn, on his oath, deposes and says, that the matters stated in the foregoing petition are true as he verily believes.

FREDERICK D. CONNER.

Subscribed and sworn to before me this 21st day of February, 1903.

NOBLE C. BUTLER,
Clerk.

FRED D. CONNER,
Receiver U. S. District Court,
District of Indiana.

In view of your demand that as receiver of the Floyd Circuit Court we deliver you the property of M. Zier & Company, as such receiver will state.

We this morning filed before Judge of the Floyd Circuit Court in chambers, report, a copy of which is attached hereto. Thereupon the Judge stated orally that he wanted us to hold the property until our accounts as receiver were rendered and passed upon. We think this might be done tomorrow, and if you are willing to defer action until then it will relieve us of embarrassment in the premises.

On the other hand if you insist on immediate surrender of the property to you, we are bound to say that we believe that to carry out in good faith the understanding with the Honorable Judge of the United States District Court of Indianapolis and our vice-president, H. E. Jewett, we ought to surrender the property to you at once.

Very truly yours,
THE NEW ALBANY TRUST COMPANY,
By H. E. Jewett,
Vice President

February 19th, 1903.

STATE OF INDIANA, } *ss.*
Floyd County. }

Joseph T. Ryerson & Son, }
vs. }
M. Zier & Company. }

To the Honorable Judge of the Floyd Circuit Court, in Chambers:

The New Albany Trust Company, Receiver in the above entitled cause, respectfully shows to this court that in pursuance of the order made by this court it appeared before

Judge A. B. Anderson, of Indianapolis, Judge of the United States District Court for the District of Indiana, on Monday, the 16th day of February, 1903, and that upon the hearing in that court this receiver stated to the Honorable Judge of said United States District Court, that it was ready and willing to turn over to the receiver appointed by the Honorable Federal Court in the bankruptcy proceedings of M. Zier & Company then pending in said court, the property and assets of said M. Zier & Company in the hands of this receiver, and this receiver further states that it has not yet been able to make up its accounts as receiver, but that it is now preparing the same to be submitted to this court; but that it is ready to turn over to Frederick D. Conner, the receiver appointed by the United States District Court in bankruptcy, all of the property of the said M. Zier & Company, and this receiver now prays for an order of this court authorizing him to turn over to said Frederick D. Conner, the property and assets of said M. Zier & Company now in its hands, together with any balance in cash which may remain after such statement of its accounts shall be made up and settled, and that upon delivering said property to said Frederick D. Connor, receiver aforesaid, it be discharged from all further liability for or on account of said property or assets of said M. Zier & Company so turned over to such Connor as such receiver.

This receiver further asks that upon making up and presentation of its account for allowance to this court, that it be allowed to resign as receiver of the said M. Zier & Company and that upon the approval of its accounts its said resignation be accepted by this court, and that it be fully and finally discharged as such receiver.

All of which is respectfully submitted,

THE NEW ALBANY TRUST COMPANY,

By Henry E. Jewett, *Vice President.*

Henry E. Jewett, being duly sworn on his oath says that he is the vice-president of the New Albany Trust Company, and makes this affidavit on behalf of said company; that the statements contained in the foregoing petition are true in substance and fact as he verily believes.

HENRY E. JEWETT.

Subscribed and sworn to before me this 19th day of February, 1903.

CHARLES B. SCOTT,
Clerk F. C. C.
By William Rouff,
Deputy.

STATE OF INDIANA, } *Sct.:*
Floyd County. }

Be it remembered, that at the January Term, 1903, of the Floyd Circuit Court, on the 14th day of February, 1903 before the Hon. William C. Utz, Sole Judge, among other the following proceedings were had, to-wit:

Joseph T. Ryerson & Son,
Plaintiff.
vs.
M. Zier & Co.,
Defendant.

ORDER ON PETITION OF RECEIVER CONCERNING BANKRUPTCY PROCEEDINGS.

Came the New Albany Trust Company, receiver herein and files its petition herein showing to the Court divers matters concerning the filing of a petition in the District Court of the United States for the District of Indiana, by the Inland Steel Company, John C. Thruston and Dey Time Register Company, as creditors of said M. Zier & Company

in involuntary bankruptcy and a petition seeking the appointment of a receiver therein to take charge of the assets in this Court's possession through its receiver herein, whereupon such an order was entered, Frederick D. Connor being named as receiver and being directed to take possession of such assets, and further showing to the Court that the record in said cause disclosed the fact that said court was not fully advised as to the various orders, injunctions, restraining orders and estoppels by entries of appearance and participation in these proceedings by divers creditors of this estate, including said Inland Steel Company and Dey Time Register Company, petitioning creditors therein, and further showing that because of the immediate adjournment of this court, and its convention not being again had until March 9, 1903, and the operation of the plant herein made by and with the advice of much more than a majority in number and amount of the creditors herein, including said Inland Steel Company, such petitioning creditor in bankruptcy and this court now, after having read said petition and having considered the various exhibits referred to in such receiver's petition, and the entire record of this cause and being fully advised, is of the opinion that had said District Court of the United States for the District of Indiana been fully advised of the divers matters herein occurring it would not have entered such order as has been therein entered; that because of the comity existing between the courts of this Country, State and Federal, its order would at most have directed any attempt to take the assets herein to be by intervention in this cause and that only, and being of the opinion that said District Court will coincide with these views and a state of necessity for the entry of this order existing, it is now ordered that the Receiver herein conduct the operation of the plant herein as hertofore ordered and

directed; that said Inland Steel Company, John C. Thruston, Dey Time Register Company, Frederick D. Connor, individually and as Receiver, and Henry C. Pettit, individually and as Marshal of the District Court of the United States for the District of Indiana, and all others in any capacity, be and they are hereby enjoined from in any wise molesting, interfering with, or attempting by legal process or otherwise to take possession of the estate of M. Zier & Co., in the hands of this Court through its Receiver herein, and in the hands of said Receiver until the further order of this Court and except by intervention in this cause.

And said Receiver is now hereby ordered and directed, through its attorney, to proceed to Indianapolis, Indiana, and there, by a limited appearance and by protestation against appearance, only, by petition upon such appearance only, lay before said District Court of the United States for the District of Indiana the facts with regard to the matters herein, said injunction, restraining order and said estoppels, and to suggest to said Court the orders of this Court and the fact that had it been fully informed, as is believed by this Court, its order with respect to the assets herein would, at the most, have been a direction to make an application to this Court at the proper time and in the proper way, for delivery of the said assets to such District Court's receiver or trustee, after proper disposition and settlement of the matters herein.

The Court being further advised and on motion of said New Albany Trust Company, Receiver, it is ordered that the Inland Steel Company, John C. Thurston, The Dey Time Register Company, be and they are hereby ordered to appear and show cause why they have prosecuted said petition in involuntary bankruptcy, why they have filed said petition seeking the appointment of a receiver for the assets of this

estate, why they have sought to take from this court the assets of this estate, why they should not be punished for contempt for disobeying the orders of this Court without first obtaining leave of the Court by petition of intervention or order in this cause. And they are hereby commanded to show such cause on or at the time of the first day of the next term of this Court. And service of a copy of this order upon Jacob Hoerter and George H. Hester because of their apparent representation of said petitioning creditors and then said co-counsel for the purpose of this show cause order shall be deemed sufficient for the service thereof on all said persons and parties.

And it is further ordered that this Court shall retain such control of said matters as may be necessary for the purpose of the entry of any and all such orders as may be deemed proper and necessary herein and therein.

And Jacob Herter and George H. Hester such attorneys now being present in court and Hester having been heard in opposition to the said petition and having notice of the entry of this order, It is now ordered that no other or further notice hereof need be given the said Inland Steel Co., John C. Thurston, and Dey Time Register Co., petitioners in said bankruptcy proceedings. And comes now C. D. Kelso and asked leave of the Court to withdraw as the attorney of record for the following named parties: United Gas and Electric Company; United States Tube Company, Indiana Water Company and Simon E. David and the Court now permits the said C. D. Kelso to withdraw herefrom."

STATE OF INDIANA, }
County of Floyd. } *ss.*

I, Charles B. Scott, Clerk of the Floyd Circuit Court, within and for the County of Floyd and State of Indiana

do hereby certify that the above and foregoing is a full, true and complete copy of an entry of record and order of Court made in the receivership of M. Zier & Company, and in the case of Joseph T. Ryerson & Son versus M. Zier & Company, as the same appears of record in my office.

Witness my hand and the seal of said Court hereto affixed at New Albany, Indiana this 20th day of February 1903.

CHARLES B. SCOTT,
Clerk Floyd Circuit Court.
By William Ruoff,
Deputy.

[SEAL.]

(Copy.)

STATE OF INDIANA.

To the Sheriff of Floyd County, Greeting:

By order of the Honorable William C. Utz, Judge of the Floyd Circuit Court, which order was made in Vacation, you are hereby commanded and required to forthwith take from Frederick D. Connor the possession of the boiler plant of M. Zier & Co. situated on the northeast corner of Pearl and Oak Streets in the City of New Albany, Indiana together with all the tools, machinery, appliances, books, papers, accounts, choses in action and all other personal property belonging to said M. Zier & Co. and found in the premises of said M. Zier & Co. at said point in the City of New Albany, Indiana being the same property wrongfully and without leave of this Court surrendered to said Frederick D. Connor by the New Albany Trust Company formerly receiver of M. Zier & Co. and you are further required by the order of said Judge of said Court to forthwith deliver said above described property to Charles D. Kelso receiver of said M. Zier & Co. and of this writ make due service and immediate return thereof.

Witness Charles B. Scott, Clerk of the Floyd Circuit Court and the seal hereto affixed at the Court House in the City of New Albany this 20th day of February, 1903.

CHARLES B. SCOTT,
Clerk Floyd Circuit Court.
By William F. Ruoff,
[SEAL.] *Deputy.*

And afterwards, to-wit, on the 21st day of February, 1903, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings were had in the above entitled cause, to-wit:

This cause coming on now to be heard on the petition of Frederick D. Connor, receiver of this court, filed herein on the 21st day of February, 1903, for an order of injunction restraining Charles D. Kelso, as receiver of M. Zier & Company under appointment of the Floyd Circuit Court, Charles D. Kelso, individually, Raymond J. Morris, Sheriff of Floyd County, Indiana, Raymond J. Morris, individually, Claude Citizen, deputy sheriff of Floyd County, Indiana, Claude Citizen, individually, Thomes Smithwick, custodian of the property of said M. Zier & Company under alleged appointment of Charles D. Kelso, as receiver of the Floyd Circuit Court, Thomas Smithwick, individually, William W. Watts, and D. A. Sachs, individually, and each of them, from detaining the possession of the property of said M. Zier & Company from said Frederick D. Connor, receiver of this court, and for an order requiring said parties and each of them to re-deliver up to said Frederick D. Connor, receiver of this court, all of said property, and the Court having considered said petition and it being shown to the satisfaction of the court that the matters stated therein are true,

It is now ordered by the Court that Charles D. Kelso, as receiver of M. Zier and Company under the appointment of

the Floyd Circuit Court, and individually, Raymond J. Morris, as sheriff of Floyd County, Indiana, and individually, Claude Citizen, deputy sheriff of Floyd County, Indiana, and individually, Thomas Smithwick, custodian of the property of said M. Zier and Company under an alleged appointment of Charles D. Kelso as receiver of the Floyd Circuit Court and individually, William W. Watts and D. A. Sachs, as attorneys for Charles D. Kelso, receiver as aforesaid, and individually, and each of them be and they are hereby required to appear before this court at Indianapolis in this District on Wednesday the twenty-fifth day of February, 1903, at nine o'clock, a. m. of said day and show cause if any they have why they should not re-deliver the property of M. Zier and Company into the possession and custody of Frederick D. Connor, as receiver of this court, and in the meantime, and until the further order of this court that they and each of them, their agents, attorneys, servants and employees, and each of them be and they are hereby restrained and prohibited from in any way interfering with said property, or making any disposition of the same.

It is further ordered by the Court that Charles D. Kelso as receiver of M. Zier and Company under the appointment of the Floyd Circuit Court, and individually, Raymond J. Morris, sheriff of Floyd County, Indiana, and individually, Claude Citizen, deputy sheriff of Floyd County, Indiana, and individually, Thomas Smithwick, custodian of the property of said M. Zier and Company under an alleged appointment of Charles D. Kelso as receiver of the Floyd Circuit Court, William W. Watts and D. A. Sachs as attorneys for Charles D. Kelso as such receiver, and individually, and each of them, are hereby required to appear before this court at Indianapolis in this District on Wednesday the twenty-fifth day of

February, 1903, at nine o'clock a. m. of said day, and then and there show cause why they should not be punished for contempt for the violation of the orders of said court heretofore made herein.

It is further ordered by the court that the Marshal of this District shall serve each of the parties named in the foregoing order by the delivery of a copy thereof to them and each of them.

And afterwards, to wit: on the 25th day of February, 1903, before the Honorable Albert B. Anderson, Judge of said court, the following further proceedings in the above entitled matter were had, to-wit:

Raymond J. Morris and Claude Sittason appear in person and by Evan B. Stotsenberg, their attorney, and Charles D. Kelso and Thomas Smithwick appear in person and by William A. Ketcham, their attorney, and file their several answers to the petition of the Receiver for orders against them, and the Receiver files his several replies thereto.

And afterwards, to-wit: on the 25th day of February, 1903, aforesaid, before the Honorable Albert B. Anderson, Judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

It is ordered by the court, that, so far as the proceedings upon the petition of the Receiver filed on the 21st day of February, 1903, are instituted against the parties named therein for a contempt of this court, they shall be docketed in this court at Indianapolis and henceforth conducted under the title of the United States against the parties aforesaid:

UNITED STATES OF AMERICA, }
District of Indiana. } *ss.*

I, Noble C. Butler, clerk of the District Court of the United States within and for said District, do hereby certify

that the above and foregoing is a full and true and complete transcript of the record and files in the matter of M. Zier & Company, alleged bankrupt, except the petition of Frederick D. Connor, Receiver in said matter, filed on the 16th day of February, 1903, and the order of adjudication in bankruptcy, entered on the 9th day of March, 1903, as fully as the same appear upon the records and files now in my office.

WITNESS my hand and the seal of said Court, at Indianapolis in said District, this 11th day of March, A. D. 1903.

NOBLE C. BUTLER,
Clerk.

UNITED STATES DISTRICT COURT,
FOR THE DISTRICT OF INDIANA.

IN THE MATTER OF M. ZIER & CO. ALLEGED BANKRUPT
NO. 37 IN BANKRUPTCY, AND

UNITED STATES,
vs.
Charles D. Kelso,
William W. Watts,
and others. } No. 6377.

THE SEPARATE RESPONSE AND PLEAS OF WILLIAM W. WATTS TO THE RULE AND INFORMATION HEREIN:

1. The respondent and defendant, William W. Watts, says he is not guilty of the alleged contempt stated in the said rule and information, or either of them.

2. Denying that he committed any act or advised or consented to the commission of any act in disobedience of any order of the District Court of the United States for the

District of Indiana entered or made by said Court in the matter of M. Zier & Company, bankrupts, case No. 37 pending in said Court at New Albany, Indiana, and denying further that he did in any way, either directly or by aiding, abetting, or advising, forcibly, or in any other way take from Frederic D. Connor, Receiver in said bankrupt proceedings, the property, goods and chattels of said M. Zier & Co., bankrupt, or any of them, or in any way, either directly, or by aiding, abetting, or advising withhold the custody of the said property, goods and chattels, or any of them, from the said Frederic D. Connor, Receiver: Yet the defendant and respondent says that the orders of the said District Court of the United States made in said bankrupt proceedings ordering and directing said Frederic D. Connor, Receiver, to take said property, goods and chattels of M. Zier & Co. into his custody, were and are void, because he says the said court had no jurisdiction to make said orders, or either of them, and the making of said orders, and each of them was beyond the power of the said Court; and the possession of said property by said Frederic D. Connor, Receiver, was wrongfully and unlawfully obtained by him, and the re-taking of said property from the possession of said Receiver, under and pursuant to the orders and writ of the Floyd County (Indiana) Circuit Court, was a lawful and proper taking. All of which will appear from the affirmative statements of the particular facts hereinafter made.

3. This defendant and respondent further states that on the 30th day of December, 1902, Joseph T. Ryerson & Son filed their certain complaint in the Floyd Circuit Court of the State of Indiana against M. Zier & Co., defendant, and on the same day caused to be issued by the Clerk of said Floyd Circuit Court, and there was duly issued by the said

Clerk a summons upon the said complaint against M. Zier & Co., which said summons on the same day of its issuance came duly to the hands of the Sheriff of Floyd County, Indiana, and was by him on the same day duly served on the defendant, M. Zier & Co. The said complaint of Joseph T. Ryerson & Son against M. Zier & Co. so filed in the Floyd Circuit Court averred an indebtedness of $15,000 of the said defendant, M. Zier & Co., to the plaintiff, Joseph T. Ryerson & Son, upon certain promissory notes stated in the complaint, and the said complaint prayed judgment in favor of said plaintiffs against said defendants in said sum of money.

The said complaint averred these further facts, that the defendant, M. Zier & Co., is a corporation duly created and organized under the laws of the State of Indiana, and authorized to and was carrying on as such corporation the business of manufacturing boilers in the City of New Albany, in the County of Floyd and State of Indiana; that the said business was a large business; that the said defendant was indebted in the aggregate to divers persons in at least the sum of $65,000; that it was unable to meet its said obligations; that its creditors were threatening to enter suits against it; that the property and assets of said defendant corporation consisted of a manufacturing plant, which was in operation, and which was employed in filling unfinished orders, and working on unfinished contracts; that the defendant was without means or money with which to continue the operation of its said business, and that if suits should be instituted against it, and its property seized upon executions or attachments, the assets and property of the defendant would be dissipated and its plant rendered much less valuable to its creditors generally than if the said property were properly preserved and continued as a going concern; and

that the property, funds and profits of the business of the said defendant were in danger of being lost and materially injured and destroyed, unless a Receiver were immediately appointed to take charge of said property and hold the custody and possession thereof, and preserve the same for such disposition thereof as the Court might adjudge.

The said Floyd Circuit Court, of the State of Indiana, and the Judge thereof in vacation were and are by the Statutes and laws of the State of Indiana authorized and empowered to appoint Receivers of and for insolvent corporations and their property and assets; that the said Floyd Circuit Court is a constitutional Court, and the Judge thereof a constitutional officer, made such by the Constitution of the State of Indiana, and the said Floyd Circuit Court is by the Constitution and laws of the State of Indiana a Court of general, original jurisdiction.

On the same day on which said complaint was as aforesaid filed in the Floyd Circuit Court, and after it was filed and after the issuance of summons thereon, the plaintiffs in said action of Joseph T. Ryerson & Son, after due notice thereof to the defendant, M. Zier & Co., moved the Hon. William C. Utz, who was and is the duly elected, commissioned, qualified and acting Judge of the said Floyd Circuit Court, to appoint a Receiver of the property and assets of the defendant, M. Zier & Co., in pursuance of the prayer of the said complaint. The said defendant, M. Zier & Co., appeared to said motion and, after due consideration thereof, the said Judge sustained said motion and appointed by his order, duly made and entered, the New Albany Trust Company as Receiver of the said defendant, M. Zier & Co., and of all of its assets and property. The said New Albany Trust Company is a corporation created and organized under the laws of the State of Indiana with full corporate powers,

among other things to act as Receiver under the appointment of Courts. That the said New Albany Trust Company immediately upon its said appointment duly qualified as such Receiver, and then and there took upon itself the duties of said Receivership, and took the oath as required by law and by said order of appointment. That immediately after its said appointment and qualification as Receiver aforesaid, and on the same day on which it was appointed as such Receiver, and under the order of the said Floyd Circuit Court, the said New Albany Trust Company, as such Receiver, took into its possession all of the said property and assets of the said defendant, M. Zier & Co, That after its said appointment, the said Receiver, made out an inventory of the property of the said M. Zier & Co., which it had taken possession of under its said appointment as such Receiver on the 30th day of December, 1902, and caused the same to be appraised, which inventory and appraisement were filed in the said Floyd Circuit Court in said action, and said inventory shows, and it is true, that the appraised value of said property was about $28,500. That on the 16th day of January, 1903, the said Receiver filed in the Floyd Circuit Court its report and petition wherein it sought the advice and instruction of said Court with respect to the continuance of the operation of said plant and prayed the Court that a time be fixed for the hearing of said report and petition, and further prayed that said M. Zier & Co. and its officers, and the creditors of said M. Zier & Co., be notified by mail and by publication of the time and place of the hearing of said report and petition, and that the said creditors be requested to appear and make known their objections, if any, to the continuance of the operation of the plant of the said M. Zier & Co. Said petition further prayed that all creditors of M. Zier & Co. be required to prove their

claims against said estate by filing proof thereof with the said Receiver, or by intervening petition in said case, and that all creditors and persons be restrained and enjoined from prosecuting suits involving said assets in any manner except by intervening petition in said action.

And thereupon, upon consideration of said petition, the Floyd Circuit Court made a certain order on the 16th day of January, 1903, directing said Receiver to continue the operations of the said business of the said M. Zier & Co. and to carry out certain contracts for manufacturing boilers and appliances, which were stated in said order, and further directed that a hearing be had of the creditors of the said M. Zier & Co. on the 24th day of January, 1903.

On the 24th day of January, 1903, the time fixed for the hearing of the said creditors of the said defendant, it was made to appear to the said Court by the said Receiver that all of the creditors of the said M. Zier & Co., as shown by the books of the said M. Zier & Co., had been notified by the said Receiver to be present on said 24th day of January, 1903, to be heard on said matters, and on said day a large majority in number and amounts of the creditors of the said M. Zier & Company appeared in said Court, among whom was the Inland Steel Company, and were heard upon the said petition of said Receiver, and thereby they became and were and are parties to said action; and after said hearing and the Court being sufficiently advised, the said Court ordered and directed that the said Receiver carry out and complete all unfinished contracts of the said defendant, M. Zier & Co., and the said Court gave to said Receiver power and authority to purchase new material for this purpose, but ordered said Receiver not to make any new contracts, and gave to said Receiver divers other orders and directions, and further ordered that all creditors and other persons be

enjoined and restrained from prosecuting any claims or suits against said estate in the hands of said Receiver except by intervening in said cause, or by first obtaining leave of said Court in said action.

The respondent and defendant further states that on the 6th day of February, 1903, the Inland Steel Company, a creditor who had appeared and was a party to said action in said Floyd Circuit Court, and John C. Thruston and John Dey doing business as the Dey Time Register Company, filed their certain petition in involuntary bankruptcy in the District Court of the United States for the District of Indiana against M. Zier & Co. alleging certain acts of bankruptcy committed by M. Zier & Co. and praying that the said M. Zier & Co. be adjudged a bankrupt. The said petition in bankruptcy further alleged "That, under certain proceedings in a State Court, a Receiver has been appointed of the assets of said corporation, M. Zier & Co., and is attempting to collect assets of said estate and incurring petty expenses in and about said estate which must be borne by the creditors thereof, and your petitioners aver that it is absolutely necessary for the preservation of said estate of M. Zier & Co. for the benefit of all of its creditors that a Receiver in bankruptcy be appointed herein forthwith."

On the 11th day of February, 1903, the said Inland Steel Company filed in said proceedings in bankruptcy its certain petition in which it stated among other things "That at the instance of said Joseph T. Ryerson & Son, a Receiver has been appointed by the Floyd Circuit Court of Floyd County, Indiana, to take charge of the assets of said alleged bankrupt; that the New Albany Trust Company is the Receiver so appointed, and that Harry E. Jewett who is the attorney for said M. Zier & Co. is also the Vice President of said New Albany Trust Company; that said Receiver

is now running the business of M. Zier & Co. and is completing certain contracts and for that purpose has employed a large number of men in the manufacturing establishment of said M. Zier & Company and has placed in charge of said plant one Michael Zier who is the Vice President and Treasurer of said alleged bankrupt; that said Michael Zier is wholly incompetent for said business; that he is wholly unfamiliar with bookkeeping and necessary office work which is essential to the safe conduct of said business, and your petitioner avers if said Receiver is permitted to remain in charge that it would result to the injury and detriment of such of the general creditors of said M. Zier & Co. who are entitled to participate in said bankrupt estate.

"Your petitioner further states that W. W. and J. R. Watts, attorneys at Louisville, Ky. are the attorneys for said Joseph T. Ryerson & Son in said proceedings wherein the said New Albany Trust Company was appointed Receiver and that said W. W. & J. R. Watts are also attorneys for said Receiver, and your petitioner fears that said Receiver is friendly to said Joseph T. Ryerson & Son and said alleged bankrupt to the detriment of the creditors at large of said alleged bankrupt. Your petitioner further alleges that it is absolutely necessary for the preservation of said estate for the benefit of all the creditors who shall be entitled to participate therein that a Receiver in bankruptcy be appointed herein forthwith to take charge of all the assets of said alleged bankrupt and administer the same under the directions of this honorable court with the usual powers of Receivers in such cases. Wherefore your petitioner prays that a Receiver in bankruptcy be appointed forthwith and that such other and further orders be entered herein as to Your Honor shall seem meet and proper."

And upon the same day, to-wit, on the 11th day of February, 1903, the said District Court of the United States

for the District of Indiana in said bankrupt proceedings, upon consideration of said petition filed by the Inland Steel Company, entered and made an order directing among other things as follows, to-wit: "It is therefore considered and ordered by the Court that Frederick D. Connor be and he is hereby appointed as Receiver herein of the property of said M. Zier & Co. with authority to take charge and possession of all the same and particularly the goods, wares and merchandise, books, papers and effects of or belonging to said M. Zier & Co. located at the City of New Albany, Floyd County, Indiana, and now in the hands of the New Albany Trust Company, as Receiver of said M. Zier & Co., appointed by the Floyd Circuit Court of Floyd County, Indiana. Said Receiver is ordered and directed to take into his possession the sheet iron and boiler manufacturing plant in said City of New Albany, together with all the tools, machinery, appliances, materials and finished products within and about said plant at said City of New Albany, which said plant is located at the corner of Pearl and Oak Streets in said city and all other property of said M. Zier & Company wheresoever found and situated. It is further ordered and adjudged by the Court that the New Albany Trust Company be and it is hereby required to deliver up to said Frederic D. Connor as Receiver all the said property and effects of said M. Zier & Company now in its possession, and to refrain hereafter from interfering in any way with the said Receiver's possession and control of the same."

And Frederic D. Connor duly accepted said appointment as the Receiver of the District Court of the United States for the District of Indiana in said bankrupt proceedings and duly qualified and executed bond as such as is required in the said order of appointment.

On the 13th day of February, 1903, Frederic D. Connor, as Receiver of the said United States District Court in said

bankrupt proceedings, and acting under the order appointing him as such Receiver, as defendant and respondent was informed and believed, appeared at New Albany, Indiana, and demanded of the New Albany Trust Company that it deliver to him the assets and effects of M. Zier & Co. which it held and had in its possession as Receiver of said Floyd Circuit Court.

The respondent and defendant and the New Albany Trust Company, receiver as aforesaid, believed that the said United States District Court and the Judge thereof were not fully informed of the exact situation and condition of the proceedings in the said Floyd Circuit Court and believed that the said order appointing said Frederic D. Connor receiver of said United States District Court in said bankrupt proceedings was made under a misapprehension of the facts relating to said proceedings and action in the said Floyd Circuit Court, and so believing this defendant and respondent and the said New Albany Trust Company conferred with respect to the demand of the said Frederic D. Connor, Receiver of the said United States District Court that the said property of the said M. Zier & Co. in the hands of said Receiver of said Floyd Circuit Court be turned over to him as Receiver of the said United States District Court, and the result of said conference was that this respondent telephoned to the Judge of the United States District Court for the District of Indiana at Indianapolis, and requested him to direct the said Frederic D. Connor not to proceed further with his demand until this defendant and respondent and the New Albany Trust Company could appear before him and explain to him the exact circumstances and condition of the action of Joseph T. Ryerson & Son against M. Zier & Co., pending in the said Floyd Circuit Court. And the said Judge of the United States District Court stated, or caused

it to be stated over the telephone, that such appearance might be made on the following Monday, to-wit, February 16th, 1903, and did direct the Receiver, Frederic D. Connor, for the time being, to suspend his demand for the possession of said property.

On the 14th day of February, 1903, the said Frederic D. Connor, as said Receiver of the United States District Court, by George H. Hester, as his attorney, appeared in the said Floyd Circuit Court in said action of Joseph T. Ryerson & Son against M. Zier & Co. and filed his verified petition therein, showing his appointment as such Receiver by order of the United States District Court for the District of Indiana and praying said Floyd Circuit Court for an order requiring the said New Albany Trust Company, as Receiver of said M. Zier & Co., to turn over and surrender to him, the said Frederic D. Connor, as Receiver in Bankruptcy the property of the said M. Zier & Co., of which the said New Albany Trust Company, as Receiver of M. Zier & Co. under the orders of the said Floyd Circuit Court was custodian, and thereupon said Frederic D. Connor as such Receiver was made a party to said suit and the matter of said petition was continued until the next term of said Floyd Circuit Court.

The defendant and respondent prepared for the New Albany Trust Company, Receiver of the said Floyd Circuit Court, a petition for advice in which it was stated that Frederic D. Connor had been appointed by the United States District Court in the said bankruptcy proceedings, Receiver for the property and effects of M. Zier & Co., and that the order of appointment directed him to take possession of said property, and stated that in the opinion of the Receiver of the Floyd Circuit Court, namely, the New Albany Trust Company, said order had been made under

some misapprehension, and stated also the fact that the respondent and defendant had telephoned to the Judge of the United States District Court, and that said Judge stated that he would hear the matter on Monday, the 16th day of February, 1903, and requested the said Floyd Circuit Court to authorize the New Albany Trust Company, or its Vice-President, Henry E. Jewett, and this defendant and respondent as its attorney to specially appear in the United States District Court at Indianapolis and make a full and complete explanation of the exact condition of the record in the said action of Joseph T. Ryerson & Son against M. Zier & Co., pending in the said Floyd Circuit Court, and accordingly said petition was filed on the 14th day of February, 1903, and thereupon on said day the said Floyd Circuit Court entered an order among other things authorizing this defendant and respondent and Henry E. Jewett, Vice-President of the New Albany Trust Company to appear before the United States District Court at Indianapolis by way of protestation and specially and present to said Court the exact condition of the said action in the said Floyd Circuit Court. All this was done solely for the purpose of preventing any posisble conflict between the two jurisdictions, and it was believed by this defendant and respondent, and by the said New Albany Trust Company, and by the Judge of the Floyd Circuit Court, that upon such presentation, the United States District Court would rescind its said order appointing said Frederic D. Connor as Receiver and directing him to take possession of said property of M. Zier & Co. Under this authorization, and not otherwise, this defendant and respondent and Henry E. Jewett, Vice-President of the New Albany Trust Company, Receiver of the said Floyd Circuit Court, did appear in the District Court of the United States, for the District of Indiana, at Indianapolis on Monday,

February 16th, 1903, and exhibited to the Court, the said order of the Floyd Circuit Court, authorizing them to appear, and made the said Court a full and complete statement of the condition of the said action of Joseph T. Ryerson & Son against M. Zier & Company in the Floyd Circuit Court.

But so it is that after said explanation and statement had been made and argued by this defendant and respondent, before the Judge of the said United States District Court, which argument and explanation consumed several hours, and continued over from Monday, February 16th, until Tuesday, February 17th, the Judge of the said United States District Court, refused in any way or to any extent to reconsider, modify or set aside his said order appointing Frederic D. Connor, Receiver, and demanded of Henry E. Jewett, as the representative of the New Albany Trust Company, Receiver, to state whether or not he would turn over the property in the hands of the New Albany Trust Company as Receiver aforesaid, to Frederic D. Connor, Receiver, and demanded of this defendant and respondent whether or not he, as counsel for the New Albany Trust Company, Receiver, would advise it to turn over said property to Frederic D. Connor, Receiver. Under these circumstances, and not otherwise, and believing that the said demand of said Judge of the said United States District Court was peremptory, this defendant and respondent, as counsel for the said New Albany Trust Company, stated that he would advise the said New Albany Trust Company to turn over the said property to the said Frederic D. Connor, Receiver.

On the 17th day of February, 1903, this defendant and respondent, and the said Henry E. Jewett, left Indianapolis, and this defendant and respondent was under the impression that it was not necessary to enter any order respecting the proceedings which were had in the United States Dis-

trict Court on the 16th and 17th of February, 1903, with respect to the said explanation and arguments made by this defendant and respondent, and was under the impression that no order would be entered in respect thereto. But this defendant and respondent says that an order was entered, a fact which he learned several days afterwards, which order is as follows:

"This cause coming on now to be heard upon the petition of Frederick D. Connor, filed herein on the 16th day of February, A. D. 1903, for the instructions of the Court concerning the property and assets of said M. Zier & Company, which are now in the possession of the New Albany Trust Company, as Receiver of the Floyd Circuit Court, in a suit therein pending against said M. Zier & Company, because of their insolvency; and the petitioning creditors in this cause and said Connor, Receiver, as aforesaid, being now present and represented by George H. Hester and William Wilhartz, their solicitors, and said New Albany Trust Company, Receiver as aforesaid, being now present and represented by Henry E. Jewett, its Vice President, and by William W. Watts, its solicitor, and after argument by counsel, the said New Albany Trust Company, as Receiver of the Floyd Circuit Court, by its said Vice President, having voluntarily offered and agreed by and with the consent of approval of said William W. Watts, its solicitor, in open Court, to surrender full and immediate possession and control of the property and assets of said M. Zier & Company, in its possession or under its control, as Receiver of the Floyd Circuit Court, to said Connor, as Receiver of this Court, upon the presentation by him to said New Albany Trust Company of a certified copy of the order of his appointment as such Receiver heretofore made by this Court.

"It is now hereby ordered by the Court that said Connor, Receiver as aforesaid, forthwith present a certified copy of the order of his appointment as such Receiver to the said New Albany Trust Company, and immediately thereupon take full possession and

control of the property and assets of said M. Zier & Company, that are now in possession or under control of said New Albany Trust Company as Receiver of the Floyd Circuit Court."

On the 19th day of February, 1903, this defendant and respondent and the New Albany Trust Company, Receiver, appeared before the Judge of said Floyd Circuit Court at New Albany in Chambers, for the purpose of formally reporting to him the result of their appearance before the United States District Court at Indianapolis on the 16th and 17th days of February. This defendant and respondent as attorney for the New Albany Trust Company, then filed before the said Judge of said Floyd Circuit Court a written petition and motion which was signed by him as attorney as follows, to-wit:

"*To the Honorable Judge of the Floyd Circuit Court in Chambers:*

"Respectfully represents the New Albany Trust Company, Receiver herein and W. W. Watts, one of its attorneys herein, that pursuant to the order of the Court herein entered on Saturday February 14, 1903, they on the 16th day of February, 1903, at Indianapolis, Ind., filed before the District Court of the United States for the District of Indiana, A. B. Anderson, Judge, presiding, a statement of the New Albany Trust Co., Receiver, under the order of this Court setting forth the facts by protestation and limited appearance only and showing to said Court the reasons for a modification of its order theretofore entered appointing a receiver granting an injunction and restraining order and directing its Receiver to take possession of the assets of M. Zier & Co.

This Receiver and said attorney say they have made diligent effort to carry out the orders of this Court with respect to those matters, but the order of said Court remains as it was and they now move the Court to strike and expunge from the files herein the petition of this Receiver filed herein on the 14th day of February, 1903, and the order entered thereon."

Upon the aforesaid appearance made by this defendant and said Henry E. Jewett, Vice President of the said New Albany Trust Company on the 16th and 17th days of February, 1903, before the United States District Court at Indianapolis the Judge of said Court seemed to feel that the petition for advice which the said New Albany Trust Company, Receiver by this defendant and respondent as its attorney filed in the Floyd Circuit Court on the 14th day of February, 1903, was in some way offensive to him, the said Judge of the District Court of the United States, and for this reason, this defendant and respondent sought by said petition and statement filed before the Judge of said Floyd Circuit Court to have leave to strike out and expunge the said petition and withdraw it from the files. This defendant and respondent was in every way in good faith endeavoring to carry out the understanding which was had between him and Henry E. Jewett as Vice President of the New Albany Trust Company, receiver, and the Judge of the District Court of the United States for the District of Indiana. This defendant and respondent did advise and continue to advise, and at no time gave any contrary advice that the said New Albany Trust Company, as Receiver of the Floyd Circuit Court should turn over to Frederic D. Connor, Receiver of the United States District Court in such bankrupt proceedings, all of the property, assets and effects of M. Zier & Company, alleged bankrupts, and for this purpose said petition and statement was filed by this defendant and respondent as attorney for the New Albany Trust Company, Receiver, and was signed by him as such attorney on the 19th day of February, 1903, before the Judge of the said Floyd Circuit Court. This defendant and respondent was much embarrassed by the condition of affairs, and felt that the Judge of said Floyd Circuit Court might misconstrue

his action in the premises, and before going to New Albany on the 19th of February, 1903, he sought Mr. David A. Sachs, who is a lawyer residing in Louisville, Ky., and who is a friend of this defendant and respondent and asked him to go to New Albany with him for the purpose of appearing for this defendant and respondent before the Judge of the Floyd Circuit Court and explaining the action of this defendant in agreeing to advise the New Albany Trust Company, Receiver, to turn over the said property to Frederic D. Connor, Receiver. The said Sachs did go with this defendant and respondent to New Albany and was present when the said petition and statement was filed before the Judge of the Circuit Court of Floyd County on that day, and the said Sachs did undertake to explain the situation and to satisfy the said Judge. After filing the said petition and on the same day, to-wit, on the 19th day of February, 1903, the said Judge of the said Floyd Circuit Court made and entered the following order upon said petition and statement, to-wit:

> "And the Judge after considering said statement refuses to concur therein, but orders that the matters and facts therein stated show that said W. W. Watts has been guilty of a contempt of Court, and it is now ordered that a rule be issued against the said W. W. Watts, to appear before the said Judge on the 21st day of February, 1903, at 3 o'clock p. m. and show cause, if any he has, why he should not be punished for contempt."

On the same day, to-wit, February 19th, 1903, the New Albany Trust Company by Henry E. Jewett, Vice President, filed before the Judge of said Floyd Circuit Court its other and separate petition, which is as follows:

> "The New Albany Trust Company, Receiver in the above entitled cause, respectfully shows to the Court

that in pursuance of the order heretofore made by this Court it appeared by limited appearance and protestation only as ordered by this court before Judge A. B. Anderson, of Indianapolis, Judge of the United States District Court for the District of Indiana, on Monday the 16th day of February, 1903, and that upon the hearing in that Court this receiver stated to the Honorable Judge of said United States District Court that it was ready and willing to turn over to the Receiver appointed by the Honorable Federal Court in bankruptcy proceedings, of M. Zier & Company, then pending in said Court the property and assets of said M. Zier & Company in the hands of this Receiver, and this Receiver further states that it has not yet been able to make up its accounts as Receiver as to the receipts and disbursements, but that it is now preparing the same to be submitted to this Court: But that it is ready to turn over to Frederic D. Connor, the Receiver appointed by the United States District Court in bankruptcy all of the property of the said M. Zier & Company; and this receiver now prays for an order of this Court authorizing it to turn over to said Frederic D. Connor, the property and assets of said M. Zier & Company, now in its hands together with any balance in cash which may remain after such statement of its accounts shall be made up and presented and that upon delivering said property to said Frederic D. Connor, Receiver aforesaid, it be discharged from all further liability for or on account of said property or assets of said M. Zier & Company so turned over to such Connor as such receiver.

"This receiver further asks that upon making up and presentation of its accounts for allowances to this Court, that it be allowed to resign as Receiver of the said M. Zier & Company, and that upon the approval of its accounts its said resignation be accepted by this Court, and that it be fully and finally discharged as such Receiver."

"All of which is respectfully submitted.

THE NEW ALBANY TRUST COMPANY,
By Henry E. Jewett,
Vice President.

And afterwards, to-wit, on the same day the Judge of said Court upon said petition and statement made the following order:

> "And the Judge after reading said tender of resignation holds that the matters therein set forth show that said Receiver is in contempt of Court, and the Judge orders that a rule issue at once against said Receiver to appear before the undersigned Judge on the 21st day of February, 1903, at 3 o'clock p. m. and show cause, if any it has or can, why it should not be punished for contempt of Court."

And on the 19th day of February, 1903, after the said New Albany Trust Company had filed its petition and statement and offer of resignation, and asked leave to resign, before the Judge of the said Floyd Circuit Court, the said New Albany Trust Company, addressed to Frederic D. Connor, Receiver for the United States District Court, for the District of Indiana, the following letter, to wit:

"FRED. D. CONNOR,
Receiver, U. S. District Court,
District of Indiana.

In view of your demand that as Receiver of the Floyd Circuit Court we deliver you the property of M. Zier and Company, as such receiver will state.

We, this morning, filed before the Judge of the Floyd Circuit Court, in Chambers, report, a copy of which is attached hereto. Thereupon the Judge stated orally that he wanted us to hold the property until our accounts as Receiver were rendered and passed upon. We think this might be done to-morrow, and if you are willing to defer action until then, it will relieve us of embarrassment in the premises.

On the other hand, if you insist on immediate surrender of the property to you, we are bound to say that we believe

that to carry out in good faith the understanding with the Honorable Judge of the United States District Court of Indianapolis and our Vice-President, H. E. Jewett, we ought to surrender the property to you at once.

Very truly yours,
THE NEW ALBANY TRUST COMPANY,
By H. E. Jewett,
Vice-Pres't.

February 19th, 1903."

On the same day and after receipt by said Frederic D. Connor of said communication, he expressed to the New Albany Trust Company, Receiver, his unwillingness to delay the delivery of said property to him, and thereupon on said day the said property was delivered to him by the said New Albany Trust Company, Receiver.

On the following day, namely, February 20th, 1903, this defendant and respondent did appear before the Judge of the said Floyd Circuit Court, because the said Judge had by telephone on the evening before requested his presence, and in pursuance of this request and in obedience thereto, the defendant and respondent appeared. On that day an order was entered removing the New Albany Trust Company as Receiver of the Floyd Circuit Court in the said action, and appointing Charles D. Kelso as Receiver in its stead, and directing the said Kelso as Receiver to demand of the said New Albany Trust Company and of Frederic D. Connor the immediate possession of the property of M. Zier & Company, which came into the hands of said New Albany Trust Company, as Receiver in the action and requiring the said Kelso, Receiver, if the said New Albany Trust Company, or said Frederic D. Connor, should fail or refuse to immediately turn over or surrender possession of said assets and property

to said Kelso, Receiver, to report that fact to the Judge of the Court. Before entering this order, the New Albany Trust Company had actually, under the advice of this defendant and respondent turned over said property to Frederic D. Connor, Receiver of the United States District Court, for the District of Indiana in said Bankrupt proceedings, as above stated. This respondent did not advise, aid, connive at or abet the making or the entry of said order of the Judge of said Floyd Circuit Court removing the New Albany Trust Company, Receiver, and appointing Charles D. Kelso, as Receiver, and had nothing whatsoever to do with it.

On the 20th day of February, 1903, after the entry of said order appointing him Receiver in the stead of the New Albany Trust Company, Charles D. Kelso filed a written report before the Judge of said Floyd Circuit Court in which it was stated that he demanded of the New Albany Trust Company possession of all the property and assets of said M. Zier & Co. which came into its hands as Receiver of said M. Zier & Co. and that said New Albany Trust Company failed and refused to surrender the possession thereof for the reason as stated by it that it had turned over the plant of M. Zier & Co. located on Pearl and Oak Streets in the City of New Albany to Frederic D. Connor, and that as to the other assets of said M. Zier & Co. in its hands it intended to account forthwith to the Honorable Judge of the Floyd Circuit Court.

And afterwards on the same day upon consideration of said report, the Judge of the said Floyd Circuit Court entered an order directing the issuance of a summary writ directed to the Sheriff of Floyd County, requiring the said Sheriff to immediately seize and take into his possession and deliver over to said Charles D. Kelso, Receiver of M.

Zier & Co., all the property of said M. Zier & Co., which said Frederic D. Connor had in his possession, which property was described in said order. This defendant and respondent did not procure the entry of said order or connive at its entry or advise its entry, and did not know of its entry until after it had been entered. He had no connection whatever with it.

This defendant and respondent is informed that upon said last named order a writ was issued by the Clerk of said Floyd Circuit Court and placed in the hands of the Sheriff of said Floyd County, and that the same was executed and the property taken from the possession of Frederic D. Connor and given into the possession of Charles D. Kelso, Receiver. But this defendant and respondent did not advise said writ to be issued or connive at its issuance, and did not know of its issuance until after it had been issued and served. He had no connection whatever with it.

This defendant and respondent further says that after his appearance before the United States District Court at Indianapolis on the 16th and 17th days of February, 1903, all of his acts and doings and advice were with the single purpose of having the New Albany Trust Company at once turn over all of the property and effects of M. Zier & Company to Frederic D. Connor, Receiver of the said United States District Court in said bankrupt proceedings; and he did nothing, and said nothing and advised nothing which would in any way or to any extent obstruct or delay the execution of that purpose. He did nothing and said nothing and advised nothing with reference to the removal of the New Albany Trust Company as Receiver and the appointment of Charles D. Kelso as Receiver. He in no way nor to any extent directly or remotely or contingently did anything or advised anything looking to the retaking of said

property from the hands of said Frederic D. Connor, Receiver, and with reference to all of these things he had nothing whatsoever to do.

This defendant and respondent files herewith as part of this response marked "A" a full and complete copy and transcript of the record of said action of Joseph T. Ryerson & Son vs. M. Zier & Co., pending in the Floyd County Indiana Circuit Court, duly certified under the Act of Congress as the same now remains and appears of record in the office of the Clerk of the said Circuit Court as of date March 4th, 1903.

He also files as part of this his response a complete transcript of the record in the matter of M. Zier & Co., alleged bankrupt, No. 37, in the District Court of the United States, for the District of Indiana at New Albany, Indiana, duly certified by the Clerk of said court as the sa ne appears upon the files and records in said office on the 3rd day of March, 1903, which is marked "B."

And having fully responded and holding himself in readiness to make any further or other response which this Honorable Court may require, he prays that the rule as to him be discharged and the information as to him dismissed.

BERNARD FLEXNER,
DAVID W. FAIRLEIGH,
Counsel for Respondent.

W. W. Watts, on oath says that the statements of the foregoing response are true as he believes.

W. W. WATTS.

Subscribed and sworn to before me by W. W. Watts this 7th day of March, 1903.

NOBLE C. BUTLER,
Clerk.

UNITED STATES OF AMERICA,
District of Indiana. } ss.

I, Noble C. Butler, Clerk of the District Court of the United States within and for said District, do hereby certify that the above and foregoing is a full and true copy of the separate response and pleas of William W. Watts, in the case of the United States against Charles D. Kelso and others, filed in my office on the 9th day of March, 1903, as fully as the same appears upon the files now in my custody.

WITNESS my hand and the seal of said Court at Indianapolis in said District, this 11th day of March, 1903.

NOBLE C. BUTLER,
[SEAL.] *Clerk.*

And at the same time comes the defendant D. A. Sachs in person and by his attorneys, W. H. H. Miller and William M. Smith, and files his response herein, in the words and figures following, to-wit:

UNITED STATES DISTRICT COURT,
FOR THE DISTRICT OF INDIANA.

In the matter of
M. Zier & Company,
Alleged bankrupt. } No. 37 in Bankruptcy.

United States
vs.
Charles D. Kelso and D. A. Sachs and others.

SEPARATE RESPONSE AND PLEAS OF D. A. SACHS TO THE RULE AND INFORMATION HEREIN.

Your respondent and defendant herein, D. A. Sachs, denies that he committed any act or advised or consented

to the commission of any act in disobedience of any order of the District Court of the United States for the District of Indiana entered or made by said Court in the matter of M. Zier & Company, bankrupts, case No. 37, pending in said Court at New Albany, Indiana, and he deines that he in any way either directly or indirectly, aided, abetted or advised the taking from Frederick D. Connor, the receiver of this Honorable Court in said action stated any property, goods or chattels of M. Zier & Company, bankrupts, or alleged bankrupts, or that he did in any way withhold or aid, abet or advise the withholding of any such property, goods or chattels, or that he in any way disregarded or disobeyed or aided, abetted or advised the disregarding or disobeying the orders or decrees of said Court or that he had been guilty of any contempt in said case.

He says that on February the eighteenth, 1903, he first learned of the bankrupt and State Court proceedings in regard to said matter stated, and that from Honorable W. W. Watts, who represented to respondent that there had some complication arisen as to the jurisdiction of the Floyd Circuit Court and this Honorable Court, and that the Judge of the Floyd Circuit Court was complaining in regard to the action of said Watts in this Honorable Court, and he, Watts, desired this respondent to appear as his friend and attorney in the said Floyd Circuit Court and relieve him if possible of any reflection made upon him by said Court or seeming contempt by reason of his said action in this Honorable Court and that this respondent did appear before said Judge and attempted to explain the matter as far as said Watts was concerned, but that he at no time advised the disobedience or disregard of the orders of this Honorable Court or the taking of said goods, property or chattels, from said Connor nor did he know that the same was in-

tended to be done until after it had been accomplished, but on the contrary, he advised against such course. He says that all he did in this matter was without fee or any consideration whatever except through friendship to said Watts.

He says that at present he is unable to say positively as the same is matter of law as to the correctness of the proceedings herein or the right of this Honorable Court to take the property from the receiver of the Floyd Court as he finds some conflict of authorities in regard to said matter, but he then believed and is still of the opinion and is advised by Counsel and does state that the receiver of the said Floyd Court had the rightful possession of said property and that this Honorable Court did not have the right or authority to interfere therewith in the summary way pursued herein.

But however this matter may be he gave no advice in regard thereto but simply acted as he has stated, advising however, that under the circumstances in this particular case, it was better not to interfere with the property in the hands of said Connor, receiver, and he fully believed that that course would pe pursued until he learned the fact of the taking of said property as stated.

3. This defendant and respondent further states that on the 30th day of December, 1902, Joseph T. Ryerson & Son filed their certain complaint in the Floyd Circuit Court of the State of Indiana against M. Zier & Co., defendant, and on the same day caused to be isused by the Clerk of said Floyd Circuit Court, and there was duly issued by the said Clerk a summons upon the said complaint against M. Zier & Co., which said summons on the same day of its issuance came duly to the hands of the Sheriff of Floyd County, Indiana, and was by him on the same day served on the defendant, M. Zier & Co. The said complaint of Joseph T. Ryer-

son & Son, against M. Zier & Co. so filed in the Floyd Circuit Court averred an indebtedness of $15,000 of the defendant, M. Zier & Co., to the plaintiff, Joseph T. Ryerson & Son, upon certain promissory notes stated in the complaint, and the said complaint prayed judgment in favor of said plaintiffs against said defendant in said sum of money.

The said complaint averred these further facts, that the defendant, M. Zier & Co., is a corporation duly created and organized under the laws of the State of Indiana, and authorized to and was carrying on as such corporation the business of manufacturing boilers in the City of New Albany, in the County of Floyd and State of Indiana; that the said business was a large business; that the said defendant was indebted in the aggregate to divers persons in at least the sum of $65,000; less that it was unable to meet its said obligations; that its creditors were threatening to enter suits against it; that the property and assets of said defendant corporation consisted of a manufacturing plant, which was in opertaion, and which was employed in filling unfinished orders, and working on unfinished contracts; that the defendant was without means or money with which to continue the operation of its said business, and that if suits should be instituted against it, and its property seized upon executions or attachments, the assets and property of the defendant would be dissipated and its plant rendered much less valuable to its creditors generally than if the said property were properly preserved and continued as a going concern; and that the property, funds and profits of the business of the said defendant were in danger of being lost and materially injured and destroyed; unless a receiver were immediately appointed to take charge of said property and hold the custody and possession thereof, and preserve the same for such disposition thereof as the Court might adjudge.

The said Floyd Circuit Court of the State of Indiana, and the Judge thereof in vacation were and are by the Statutes and Laws of the State of Indiana authorized and empowered to appoint receivers of and for insolvent corporations and their property and assets; that the said Floyd Circuit Court is a constitutional Court, and the judge thereof a constitutional officer, made such by the Constitution of the State of Indiana, and the said Floyd Circuit Court is by the Constitution and laws of the State of Indiana a Court of general, original jurisdiction.

On the same day on which said complaint was as aforesaid filed in the Floyd Circuit Court, and after it was filed, and after the issuance of summons thereon, the plaintiffs in said action of Joseph T. Ryerson & Son, after due notice thereon to the defendant, M. Zier & Co., moved the Hon. William C. Utz, who was and is the duly elected, commissioned, qualified and acting judge of the said Floyd Circuit Court, to appoint a Receiver of the property and assets of the defendant, M. Zier & Co., in pursuance of the prayer of the said complaint.

The said defendant, M. Zier & Co., appeared to said motion and after due consideration thereof, the said Judge sustained said motion, and appointed by his order, duly made and entered, the New Albany Trust Company as Receiver of the said defendant, M. Zier & Co., and of all of its assets and property. The said New Albany Trust Company is a corporation created and organized under the laws of the State of Indiana with full corporate powers among other things to act as Receiver under the appointment of Courts. That the said New Albany Trust Company immediately upon its said appointment duly qualified as such Receiver, and then and there took upon itself the duties of said Receivership, and took the oath as required by law and by said order of appointment.

That immediately after its said appointment and qualification as Receiver aforesaid, and on the same day on which it was appointed as such Receiver, and under the order of the said Floyd Circuit Court, the said New Albany Trust Company, as such Receiver, took into its possession all of the said property and assets of the said defendant, M. Zier & Co.

That after its said appointment, the said Receiver, made out an inventory of the property of the said M. Zier & Co., which it had taken possession of under its said appointment as such Receiver on the 30th day of December, 1902, and caused the same to be appraised, which inventory and appraisement were filed in the said Floyd Circuit Court in said action, and said inventory shows, and it is true that the appraised value of said property was about $28,500. That on the 16th day of January, 1903, the said Receiver filed in the Floyd Circuit Court its report and petition wherein it sought the advice and instruction of said Court with respect to the continuance of the operation of said plant and prayed the Court that a time be fixed for the hearing of said report and petition, and further prayed that said M. Zier & Co. and its officers, and the creditors of said M. Zier & Co. be notified by mail and by publication of the time and place of the hearing of said report and petition, and that the said creditors be requested to appear and make known their objections, if any, to the continuance of the operation of the plant of the said M. Zier & Co.

Said petition further prayed that all creditors of M. Zier & Co. be required to prove their claims against said estate by filing proof thereof with the said Receiver, or by intervening petition in said case, and that all creditors and persons be restrained and enjoined from prosecuting suits involving said assets in any manner except by intervening petition in said action.

And thereupon upon consideration of said petition, the Floyd Circuit Court made a certain order on the 16th day of January, 1903, directing said Receiver to continue the operations of the said business of the said M. Zier & Co. and to carry out certain contracts for manufacturing boilers and appliances, which were stated in said order, and further directed that a hearing be had of the creditors of the said M. Zier & Co. on the 24th day of January, 1903.

On the 24th day of January, 1903, the time fixed for the hearing of the said creditors of the said defendant, it was made to appear to the said Court by the said Receiver that all of the creditors of the said M. Zier & Co., as shown by the books of the said M. Zier & Co., had been notified by the said Receiver to be present on said 24th day of January, 1903, to be heard on said matters, and on said day a large majority in number and amounts of the creditors of the said M. Zier & Company appeared in said Court, among whom was the Inland Steel Company, and were heard upon the said petition of said Receiver, and thereby they became and were and are parties to said action; and after said hearing, and the Court being sufficiently advised, the said Court ordered and directed that the said Receiver carry out and complete all unfinished contracts of the said defendant, M. Zier & Co., and the said Court gave to said Receiver power and authority to purchase new material for this purpose, but ordered said Receiver not to make any new contracts, and gave to said Receiver divers other orders and directions, and further ordered that all creditors and other persons be enjoined and restrained from prosecuting any claims or suits against said estate in the hands of said Receiver except by intervening in said cause, or by first obtaining leave of said Court in said action.

The respondent and defendant further states that on the 6th day of February, 1903, the Inland Steel Company, a

creditor who had appeared, and was a party to said action, in said Floyd Circuit Court, and John C. Thurston and John Dey, doing business as the Dey Time Register Company, filed their certain petition in involuntary bankruptcy in the District Court of the United States for the District of Indiana against M. Zier & Co., alleging certain acts of bankruptcy committed by M. Zier & Co., and praying that the said M. Zier & Co. be adjudged a bankrupt. The said petition in bankruptcy further alleged: "That under certain proceedings in a State Court, a Receiver has been appointed of the assets of said corporation, M. Zier & Co., and is attempting to collect assets of said estate and incurring petty expenses in and about said estate which must be borne by the creditors thereof, and your petitioners aver that it is absolutely necessary for the preservation of said estate of M. Zier & Co. for the benefit of all of its creditors that a Receiver in bankruptcy be appointed herein forthwith."

On the 11th day of February, 1903, the said Inland Steel Company filed in said proceedings in bankruptcy its certain petition in which it stated among other things "That at the instance of said Joseph T. Ryerson & Son, a Receiver has been appointed by the Floyd Circuit Court of Floyd County, Indiana, to take charge of the assets of said alleged bankrupt; that the New Albany Trust Company is the Receiver so appointed, and that Harry E. Jewett who is the attorney for said M. Zier & Co. is also the Vice-President of said New Albany Trust Company; that said Receiver is now running the business of M. Zier & Co. and is completing certain contracts and for that purpose has employed a large number of men in the manufacturing establishment of said M. Zier & Company and has placed in charge of said plant one Michael Zier who is the Vice-President and Treasurer of said alleged bankrupt; that said Michael Zier is wholly

incompetent for said business; that he is wholly unfamiliar with book-keeping and necessary office work which is essential to the safe conduct of said business, and your petitioner avers if said Receiver is permitted to remain in charge that it would result to the injury and detriment of such of the general creditors of said M. Zier & Co. who are entitled to participate in said bankrupt estate.

"Your petitioner further states that W. W. and J. R. Watts, attorneys at Louisville, Ky., are the attorneys for said Joseph T. Ryerson & Son in said proceedings wherein the said New Albany Trust Company was appointed Receiver and that said W. W. and J. R. Watts are also attorneys for said Receiver, and your petitioner fears that said Receiver is friendly to said Joseph T. Ryerson & Son and said alleged bankrupt to the detriment of the creditors at large of said alleged bankrupt.

"Your petitioner further alleges that it is absolutely necessary for the preservation of said estate for the benefit of all the creditors who shall be entitled to participate therein that a Receiver in bankruptcy be appointed herein forthwith to take charge of all the assets of said alleged bankrupt and administer the same under the directions of this Honorable Court with the usual powers of Receivers in such cases.

"Wherefore your petitioner prays that a Receiver in bankruptcy be appointed forthwith and that such other and further orders be entered herein as to your Honor shall seem meet and proper."

And upon the same day, to-wit, on the 11th day of February, 1903, the said District Court of the United States for the District of Indiana in said bankrupt proceedings, upon consideration of said petition filed by the Inland Steel Company entered and made an order directing among other things as follows, to-wit:

"It is therefore considered and ordered by the Court that Frederick D. Connor be and he is hereby appointed as Receiver herein of the property of said M. Zier & Co. with authority to take charge and possession of all of the same and particularly the goods, wares and merchandise, books, papers and effects of or belonging to said M. Zier & Co. located at the City of New Albany, Floyd County, Indiana, and now in the hands of the New Albany Trust Company, as Receiver of said M. Zier & Co. appointed by the Floyd Circuit Court of Floyd County, Indiana. Said Receiver is ordered and directed to take into his possession the sheet iron and boiler manufacturing plant in said City of New Albany, together with all the tools, machinery, appliances, materials and finished products within and about said plant at said City of New Albany, which said plant is located at the corner of Pearl and Oak Streets in said City and all other property of said M. Zier & Comyany wheresoever found and situated.

It is further ordered and adjudged by the Court that the New Albany Trust Company be and it is hereby required to deliver up to said Frederick D. Connor as Receiver all the said property and effects of said M. Zier & Company now in its possession, and to refrain hereafter from interfering in any way with the said Receiver's possession and control of the same."

And Frederic D. Connor duly accepted said appointment as the Receiver of the District Court of the United States for the District of Indiana in said bankruptcy proceedings and duly qualified and executed bond as such as is required in the said order of appointment.

On the 13th day of February, 1903, Frederic D. Connor, as Receiver of the said United States District Court in said bankrupt proceedings, and acting under the order appoint-

ing him as such Receiver, as defendant and respondent was informed and believed, appeared at New Albany, Indiana, and demanded of the New Albany Trust Company that it deliver to him the assets and effects of M. Zier & Co. which it held and had in its possession as Receiver of said Floyd Circuit Court.

On the 14th day of February, 1903, the said Frederic D. Connor, as said Receiver of the United States District Court by George H. Hester, as his Attorney, appeared in the said Floyd Circuit Court in said action of Joseph T. Ryerson & Son against M. Zier & Co. and filed his verified petition therein showing his appointment as such Receiver by order of the United States District Court of the District of Indiana, and praying said Floyd Circuit Court for an order requiring the said New Albany Trust Company, as Receiver of said M. Zier & Co. to turn over and surrender to him, the said Frederic D. Connor, as receiver in Bankruptcy the property of the said M. Zier & Co. of which the said New Albany Trust Company as Receiver of M. Zier & Co. under the orders of the said Floyd Circuit Court was custodian, and thereupon said Frederic D. Connor as such Receiver was made a party to said suit and the matter of said petition was continued until the next term of said Floyd Circuit Court.

This respondent further says that after he was called into this matter, viz: Monday, February 23,1903, he learned for the first time of the making of the order in this Honorable Court as follows, viz:

"This cause coming on now to be heard upon the petition of Frederick D. Connor, filed herein on the 16th day of February, A. D. 1903, for the instructions of the Court concerning the property and assets of said M. Zier & Company, which are now in the possession of the New Albany Trust Company, as Receiver of the Floyd Circuit Court, in a suit

therein pending against said M. Zier & Company, because of their insolvency; and the petitioning creditors in this cause and said Connor, Receiver as aforesaid, being now present and represented by George H. Hester and William Wilhartz, their Solicitors and said New Albany Trust Company, Receiver as aforesaid, being now present and represented by Henry E. Jewett, its Vice President, and by William W. Watts, its Solicitor, and after argument by counsel, the said New Albany Trust Company, as Receiver of the Floyd Circuit Court, by its said Vice President, having voluntarily offered and agreed by and with the consent and approval of said William W. Watts, it Solicitor, in open Court, to surrender, full and immediate possession and control of the property and assets of said M. Zier & Company, in its possession or under its control, as Receiver of the Floyd Circuit Court, to said Connor, as Receiver of this Court, upon the presentation by him to said New Albany Trust Company of a certified copy of the order of his appointment as such Receiver heretofore made by this Court.

It is now hereby ordered by the Court that said Connor Receiver as aforesaid, forthwith present a certified copy of the order of his appointment as such Receiver to the said New Albany Trust Company, and immediately thereupon the full possession and control of the property and assets of said M. Zier & Company, that are now in possession or under control of said New Albany Trust Company as Receiver of the Floyd Circuit Court.

This respondent further shows to the Court that on the 19th day of February, 1903, W. W. Watts, and the New Albany Trust Company, as affiant is informed and believes appeared before the Honorable Judge of the Circuit Court of the County of Floyd and by report of petition showed to said Court that this Honorable Court was insisting that it

had sole jurisdiction of the affairs of said bankrupt and the right summarily to take possession of all the property in the hands of the Receiver of said Floyd Circuit Court, under the proceedings above referred to, but the said Judge of the Floyd Circuit Court refused to concur in that conclusion and insisted that his jurisdiction was prior and superior to that of this Court and thereupon threatened proceedings for contempt against said Watts and threatened to punish him for alleged actions in violation of the orders of that Court in the premises; that it was solely, as hereinbefore stated, by reason of the complications in which Mr. Watts found himself by reason of the conflicting views of said two Courts; that this respondent had anything to do with said proceedings and he avers that his action in the premises and the only advice and only action that he took was with a view to assisting and extricating Mr. Watts from said complications and with a view to allaying the irritation and avoiding the unpleasant consequences that might result from a conflict in the premises, and with a view to avoiding any action that might be justly construed as a violation of the orders of either Court.

Affiant further says that he prepared no petition or order for the Judge of the Floyd Circuit Court to order said property to be seized; that he did not know that such a petition or order was to be prepared or was prepared until after the said petition or order had been presented and the order made; that said petition was presented or the order was made at night after affiant had gone home to his home in Louisville, as he is informed, and was without his knowledge, cognizance or consent; that he had nothing whatever to do in any way with the procuring or the execution of said order or with the taking of said property or any part thereof from said Connor, Receiver.

And this respondent for the further information of this Court begs leave to refer to a transcript of the proceedings of the Floyd Circuit Court or the Judge thereof, which is filed as Exhibit "A," with the response of the said W. W. Watts in this matter, and prays that the same may be considered as a part of this, his response, solely for the purpose of showing what action was taken in said Floyd Circuit Court, and having fully answered the premises this respondent prays that he be hence discharged with his costs.

D. A. SACHS.

W. H. H. MILLER,
W. M. SMITH,
Attorneys for Sachs.

Subscribed and sworn to before me this 9th day of March, 1903.

NOBLE C. BUTLER,
Clerk.

And thereupon the United States Attorney files his motion to reject and strike out parts of the response of the defendant William W. Watts, which motion is in the words following, to-wit:

(Motion not on file.)

And thereupon the United States Attorney files his reply to each response, which replies are respectively in the words following, to-wit:

Comes now the United States by Joseph B. Kealing, United States Attorney for the District of Indiana and by way of replication to the response of William Watts, denies each and every allegation contained therein except his denials.

JOSEPH B. KEALING,
U. S. Attorney.

Comes now the United States by Joseph B. Kealing, United States Attorney for the District of Indiana and by way of replication to the response of D. A. Sachs, denies each and every allegation contained therein except his denials.

JOSEPH B. KEALING,
U. S. Attorney.

And this cause is now submitted to the court for trial, finding and judgment; and the evidence being partially heard the court doth now adjourn until to-morrow morning.

And afterwards, to-wit, at the November Term of said Court, on the 10th day of March, 1903, before Honorable Albert B. Anderson, Judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now Joseph B. Kealing, Esq., United States Attorney and the defendants William W. Watts and D. A. Sachs in person and by their respective Attorneys come also, and the evidence having been further heard the court doth now adjourn until to-morrow morning.

And afterwards, to-wit, at the November Term of said court, on the 11th day of March, 1903, before Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now Joseph B. Kealing, Esq., United States Attorney, and the defendants William W. Watts and D. A. Sachs in person and by their respective Attorneys come also, and the evidence having been further heard the court doth now adjourn until to-morrow morning.

And afterwards, to-wit, at the November Term of said Court, on the 12th day of March, 1903, before Honorable Albert B. Anderson, Judge of said Court, the following

further proceedings in the above entitled cause were had, to-wit:

Comes now Joseph B. Kealing, Esq., United States Attorney, and the defendants William W. Watts and D. A. Sachs in person and by their respective Attorneys come also, and the evidence having been further heard the court doth now adjourn until to-morrow morning.

And afterwards, to-wit, at the November Term of said court, on the 13th day of March, 1903, before Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now Joseph B. Kealing, Esq., United States Attorney, and the defendants William W. Watts and D. A. Sachs in person and by their respective Attorneys also come, and the evidence and argument of counsel having been heard by the court, the court doth now take the same under advisement.

And afterwards, to-wit, at the November Term of said Court, on the 14th day of March, 1903, before Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now Joseph B. Kealing, Esq., United States Attorney, and the defendants William W. Watts and D. A. Sachs in person and by their respective Attorneys also come, and thereupon the court having considered the evidence and argument of counsel and being sufficiently advised in the premises doth find that said defendants are guilty of the contempt charged.

It is therefore considered by the court that said defendant William W. Watts, for the offence charged be imprisoned and confined in the jail of Marion County, Indiana, for the

term of sixty days, and that he do pay unto the United States the cost of this proceeding, taxed at $ . . ., and that he do stand committed until said costs are paid.

And it is further considered by the court that said defendant D. A. Sachs for the offence charged be imprisoned and confined in the jail of Marion County, Indiana, for the term of sixty days, and that he do pay unto the United States the cost of this proceeding, taxed at $ . . ., and that he do stand committed until said costs are paid.

Upon the rendition of the judgment herein, the following opinion was delivered by the court:

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE DISTRICT OF INDIANA.

Saturday, March 14, 1903.

HONORABLE A. B. ANDERSON, *District Judge.*

UNITED STATES,
vs.
David A. Sachs. } For Contempt of Court.

UNITED STATES,
vs.
William W. Watts. } For Contempt of Court.

ANDERSON, *District Judge*, orally:

Some time prior to the 29th day of December, 1902, a corporation located at New Albany, existing under the name of M. Zier and Company, became insolvent. By a series of fraudulent entries on the books, and by padding the pay rolls, M. Zier, the vice president and one of the largest stockholders of the corporation, had stolen from the funds of that corporation $9,600. About the 29th day of Decem-

ber, 1902, he paid this $9,600. over to one Charles L. Jewett, an attorney at New Albany, who, with his brother, H. E. Jewett, composed the firm of attorneys of Jewett and Jewett, of that city. Of this money $600. was paid over to Charles L. Jewett as attorney's fees, for services to be rendered to the M. Zier and Company corporation in effecting a settlement of some kind with its creditors. The $9,600 was paid over to Charles L. Jewett to be paid by him to the agent of Minnie Zier, a large stockholder in the corporation, and a sister-in-law of M. Zier.

This money was paid to Charles L. Jewett under such circumstances that this court believes that at the time it was paid over to him he knew the manner in which the money was abstracted from the treasury of this company, and knew the fraudulent purpose for which it was handed over to him.

On the 29th of December, 1902, or just a few days before that, Ryerson & Son of Chicago, a creditor of M. Zier and Company, received $3,100. of the funds of this corporation. On the 29th day of December, Charles L. Jewett went to the city of Chicago and took with him this $9,000. It must have been arranged beforehand that the agent of Minnie Zier, Mr. Meargel, who lives at Minneapolis, should meet him in Chicago.

It is indisputable that he paid that $9,000 to Mr. Meargel, in the city of Chicago, on the 29th day of December, 1902. At that time, and for some time prior thereto, Charles L. Jewett had been the attorney and counselor and adviser of M. Zier and Company, and especially of its managing vice president, Mr. M. Zier; knew all about its affairs, and, as attorney and confidential adviser of M. Zier and the corporation, he went to the City of Chicago, at the time he paid this $9,000 to the agent of Minnie Zier, as he himself testifies,

chiefly for the purpose of procuring the corporation, Ryerson and Son, to bring suit against M. Zier and Company in the Floyd Circuit Court, at New Albany, to have a receiver appointed and to wind up its affairs. While in Chicago he made that arrangement with Ryerson and Son. He called up his brother, Henry Jewett, over the long-distance telephone and told him of the arrangement. That night the agent of Ryerson and Son went to Louisville. The next morning Henry Jewett met with Watts and Watts, the attorneys of Ryerson and Son, and it was agreed between them that a suit should be immediately begun in the Floyd Circuit Court, that a receiver should be immediately appointed for all the assets and property of this insolvent corporation, and that the New Albany Trust Company, in which Henry E. Jewett, and Charles L. Jewett were both stockholders, and of which Henry E. Jewett was the vice president, should be the receiver. The suit was commenced on the afternoon of December 30, 1902. Summons was issued. Immediately M. Zier, in pursuance of this arrangement and understanding, with his attorney, Henry Jewett, appeared before the judge of that court, in chambers, and consented to the appointment, or agreed to the appointment of the New Albany Trust Company as receiver of the M. Zier and Company property.

It is said that this was a friendly suit. To the mind of this court it was a fraudulent proceeding. It was collusive. It was born in fraud, and the subsequent transactions down there show that it reeked with fraud from begininng to end. In my judgment that proceeding by which the New Albany Trust Company was made the receiver of M. Zier and Company, an insolvent corporation, was in substance a voluntary assignment in which the insolvent corporation selected the trustee, the purpose and scope of which was the distri-

bution of the assets of this insolvent and subsequently adjudicated bankrupt corporation, among its creditors. On the 16th day of January this receiver filed in the Floyd Circuit Court an inventory, and what has been here called a petition for instructions as how to manage the affairs of the receivership. Creditors, such as appeared to be so on the books of M. Zier and Company, were notified by mail to appear in the Floyd Circuit Court on the 24th day of January, at a creditors' meeting. This creditors' meeting was the most remarkable meeting of the kind that this court has ever heard of. It was held in the court-room, and it is said to have been presided over by the judge. It is claimed, by those who were engineering the proceeding, that the purpose of it was to advise with those creditors as to the best methods upon which to administer this trust; and yet the evidence shows conclusively—there is no question about it—that this payment of $9,000 of money which was stolen from the treasury of this corporation was concealed from the creditors; that this payment of $3,100 to Ryerson and Son, just a few days before the beginning of that suit, was concealed from the creditors; and that the payment of $600 to Jewett and Jewett as attorneys' fees was concealed from the creditors.

After the creditors had consulted about the matter to some extent, and after most of them and their representatives had left the court-room, W. W. Watts, one of the defendants, here, drew up an order to be entered by the Floyd Circuit Court. That order was an effort in one sense to bind the creditors who were present at that meeting, but without the knowledge of any other creditor, and without the knowledge of any representative of any other creditor, and, at the procurement of the defendant, W. W. Watts, the court not only authorized the continuance of the business of the

corporation and the completion of certain contracts, but enjoined all creditors from proceeding in any other court or manner, except by intervention in that proceeding in that court. It was declared by Mr. Watts at that meeting that the purpose and object and scope of the proceedings in that court was to wind up the affairs of the M. Zier and Company, and to do this as near in conformity to the bankrupt law as possible.

On the 6th day of February, 1903, three creditors of the M. Zier and Company corporation, representing the necessary amount, the statutory amount of claims, filed a petition in bankruptcy in this court. On the 11th day of February, 1903, these same creditors filed in this court a petition asking this court to appoint a receiver for the alleged bankrupt, M. Zier and Company. As set forth in the petition, matters and facts were shown which at that time appeared to the court to imperatively demand the appointment of a receiver, and the subsequent developments in this case have conclusively shown that if this court had not appointed a receiver at that time, and used every effort to get that property into the possession of the officers of this court, it would have failed to do its duty.

On the 11th day of February, 1903, the court, after due deliberation, appointed as receiver of this court, Frederick D. Connor. He was ordered to take possession of the property of the corporation, M. Zier & Company, which company has since been adjudicated by this court to be bankrupt. The New Albany Trust Company was ordered to refrain from any interference with that property. Mr. Connor went to New Albany, filed a petition in the Floyd Circuit Court on Saturday, February 14th, the last day of the then term of that court, in which petition he set forth a certified copy of his appointment and the orders which were

made in connection therewith, and asked that court to order its receiver to turn the property over to him as receiver of the court. The judge of the Floyd Circuit Court ignored that petition, paid no attention to it whatever, neither granted it nor denied it, but contemptuously continued it to next term, which did not meet until three weeks thereafter. On February 16, 1903, W. W. Watts, the defendant here, having obtained authority, as he claimed from the judge of the Floyd Circuit Court to appear here for that purpose, together with Henry E. Jewett, the vice-president of the New Albany Trust Company, the receiver appointed by that court, appeared in this court They objected that this court had no power to appoint a receiver; that if it had the power to appoint a receiver that it had no power to take possession of the property of the alleged bankrupt by summary proceedings.

I stop here simply to state that the chief argument made by Mr. Watts at that time was that the receiver of the Floyd Circuit Court held by adverse possession. It was maintained upon that argument that this court had no right to take possession of this property out of the receiver of the Floyd Circuit Court because that court's receiver held adversely. Counsel for the defendants here who have argued the law questions before this court upon this hearing have distinctly disavowed this contention. Mr. Miller yesterday squarely stated that there was no question of adverse possession in this case.

After a full discussion of this matter before this court on the 16th and 17th days of February, 1903, Henry E. Jewett, as vice-president of the New Albany Trust Company, and W. W. Watts, Attorney for the New Albany Trust Company, receiver, and the attorney for the plaintiff in that suit—an attorney authorized, as he claimed, by

the judge of that court to represent the matter here—voluntarily, as the records of this court show, in open court, offered to turn this property over to the receiver of the United States Court. Both Mr. Henry Jewett, who is vice-president of the New Albany Trust Company, and a lawyer, and Mr. W. W. Watts, who is a lawyer, at that time conceded as Mr. Miller stated here yesterday, that the absolute right to the possession of this property was in this court. Thereupon these gentlemen, after having conceded, that the right to the possession of this property was in the receiver of this court, after voluntarily offering to turn this property over to the receiver of this court, returned to the city of New Albany.

Two days after, on Thursday morning, February 19th, in pursuance of that voluntary offer, the New Albany Trust Co npany, turned over to Frederick D. Connor, the receiver of this court, the property and plant of this bankrupt corporation. Mr. Connor took peaceable possession of that property as the receiver of this court, entered into possession, remained in possession, caring for it as he was bound under the law to do until Friday night, the 20th day of February, when, after dark, Charles D. Kelso, Ramond G. Morris, Claude Sittason and so ne others went to this plant and forcibly, in the night time, ejected the receiver of this court and took violent and forcible possession of that property. Thereupon the receiver having filed a written statement here of the facts, a citation was issued to these defendants, among others, to show cause why they should not be punished for a contempt of this court in interfering with the peaceable and lawful possession of the property of the bankrupt in the receiver of this court.

It has been argued here as though the question now before the court was whether or not this court has the power

by summary proceedings, or had the power at that time, by summary proceedings, to take the possession of that property away from the receiver of the state court and place it in the hands of the receiver of this court. As I shall show presently, that is not the question here at all. But so much has been said about the law in this case that I propose to now go briefly into that question and show that this court had the power, the unquestioned power, to issue a summary order wresting this property from the receiver of the state court, and placing it into the custody of the receiver of this court.

The constitution of the United States among other things say: "This constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding." I understand the word "supreme" in that clause to mean supreme—just what it says.

Another clause of this constitution gives Congress the power to enact uniform laws upon the subject of bankruptcy throughout the United States. It is familiar law that whenever Congress exercises any of powers granted to it by the federal constitution, that it occupies the field and that no state can thereafter enter that field. In this instance, Congress has occupied the field. It has passed a uniform law upon the subject of bankruptcy. And, under the constitution, the clause which I have just read, and the authority given to Congress to pass this law, upon these principles alone, it seems to me to be perfectly evident that whatever there may be in the state law or in the state proceedings which is antagonistic to the scope, effect and tenor of the bankrupt law must necessarily fall.

But that has not been left to construction. The courts have frequently passed upon the question. Much has been said about the rulings under the act of 1867. I shall pause here long enough to show what the courts held under that law.

In the National Bankruptcy Register, volume six, page forty-three, is a case decided by Judge Blodgett, formerly of this circuit. It is entitled, In re Merchants' Insurance Co. In this case creditors petitioned to have an insurance company declared a bankrupt. Prior to the filing of the petition, suit had been begun in a state court of Illinois to dissolve that corporation, and a receiver had been appointed in that suit prior to the institution of the proceedings in involuntary bankruptcy; and the question was whether or not the receiver appointed by the United States Court in bankruptcy was entitled to take the possession of the property and administer it notwithstanding the fact it was then in the possession of the receiver of the state court. Judge Blodgett, in the course of his decision, said: "The object and intent of the general bankrupt law is to place the administration of the affairs of insolvent persons and corporations *exclusively* under the jurisdiction of the federal courts of bankruptcy; and the enactment of the general bankruptcy law, now in force, suspended all actions and proceedings under state insolvent laws." In the complaint in the Floyd Circuit Court Ryerson and Son passed their right to the appointment of the receiver upon the sole ground that the corporation was insolvent. In the same case it is further said: "But it is objected that the proceedings in the state court here complained of, being in accordance with a general statute of this state and part of the organic law by which the respondent exists, and being predicated mainly upon the reserved right of the state to protect its citizens against

irresponsible insurance companies, and the state court having acquired jurisdiction of the parties and subject-matter, this court can not now interfere as a bankrupt court to take charge of and administer the assets in question, although the insolvency of the respondent is fully conceded. It seems enough to suggest in answer to this position, that, if correct, any state could effectually defeat the operation of any bankrupt law passed by congress by simply providing that any person or corporation if deemed insolvent or incapable of doing business by a state officer, might, under the power of exercising and enforcing police regulations or enactments by the states be wound up and its assets administered upon in the state courts notwithstanding such person or corporation might be insolvent and guilty of all the acts of bankruptcy provided for in the general bankrupt law."

And in the 11th National Bankruptcy Register in the case of John L. Watson v. The Citizens Saving Bank of South Carolina, in a decision by Judge Bond, it is held (11 N. B. R. 161): "The jurisdiction of the United States courts in bankruptcy is an exclusive jurisdiction, and although State courts have jurisdiction under their statutes to settle and arrange the affairs and distribute the assets of an insolvent corporation their jurisdiction is at an end the moment the corporation is adjudicated a bankrupt by the United States District Court." And in the opinion of the court, it is said: "We are of the opinion that the jurisdiction of the United States courts in bankruptcy is an exclusive jurisdiction. That although the state courts have jurisdiction, under their statutes, to settle and arrange the affairs and distribute the assets of an insolvent corporation, their jurisdiction is at end the moment the corporation is adjudicated a bankrupt by the District Court," "and in this respect we can see no difference between the proceedings of a state court

under a particular statute relating to insolvent corporations, and its proccedings under its general powers as a court of equity to wind up the affairs of an insolvent corporation."

The Federal courts, sitting as courts of bankruptcy, have repeatedly decided this question since the act of 1898 was passed.

In 90 Federal, 475, in the case of In re Gutwillig, decision by Judge Brown, District Judge in the southern district of New York, it is held: "Voluntary general assignments for the benefit of creditors made in conformity with the laws of the State of New York, though said laws are not treated as 'insolvent laws' within the meaning of the last paragraph of the act of 1898, are voidable by the trustee of the debtor in bankruptcy if made within four months of the adjudication, because incompatable with the purpose and policy of the bankrupt law, and the rights of creditors thereunder to the appointment of the trustee and the supervision of the assets of bankruptcy; because in fraud of creditors within section seventy of the act, as the assignment deprives creditors of the important advantages secured to them under the act of 1898; and because if not voidable, the clause of section 3, making such an assignment *ipso facto* 'an act of bankruptcy' would be practically nullified, and rendered of no use to creditors." And in this case the court cites the case which I will call attention to presently.

In the same volume, in the case of In re Bruss-Ritter Co., 90 Fed. 651, decision by Judge Seaman of this circuit, it is decided squarely that the bankruptcy act suspends the operation of state insolvency laws from the time of such enactment, and subject only to such limitations as may be prescribed in the bankruptcy act. The facts of this case are so similar to the case at bar that I want to read a little from this decision: "The petition by five creditors states a *prima*

facia cause within the provisions of the recent act of congress for an adjudication of involuntary bankruptcy against the Bruss-Ritter Company, as an insolvent corporation of Wisconsin. The petition was filed November 4, 1898, and on November 11, 1898, upon petition showing cause therefor, a receiver of the effects of said corporation was appointed by order of this court. The motion to dismiss is founded solely upon the contention that the bankruptcy act of July 1, 1898, having postponed the filing of any petition for involuntary bankruptcy until November 1, 1898, was inoperative in the case at bar, because an action was commenced in the Superior Court of Milwaukee County on October 27, 1898, founded on alleged insolvency and fraud, to take possession of the assets of the corporation for the same purposes involved in the bankruptcy proceedings, pursuant to provisions of the Wisconsin statute, which action was pending when this petition was filed, including an application for the appointment of a receiver. The power of congress to enact a general bankruptcy statute is secured by constitutional provision. In the absence of such congressional enactment, the states are free to provide for insolvency relief of limited extent, but when congress exercises its authority by a general enactment all state action is suspended from such time and subject only to such limitations as may be prescribed in the act. Tua vs. Carriere, 117 U. S. 201-209. As remarked in Platt vs. Archer, 9 Blackf. 559, Fed. cases No. 11213, this authority of congress 'is paramount and exclusive, and so is the jurisdiction of the district court thereunder.'" There is a case where a proceeding such as the one in the case at bar was begun in the state court. A receiver had been appointed by the state court. A receiver was then in possession, and the court held that the moment the petition was filed in bankruptcy, before the adjudication, pending the adjudication,

upon due application, the court on bankruptcy had the right to appoint a receiver and had the right to take the property from the state court. In that case the court further said: "There is no jurisdiction to administer in the state courts causes which are so clearly defined in this act, and no ground for applying the doctrine which prevails where jurisdiction is concurrent giving priority to that which is first obtained."

As I said, this has been repeatedly decided. In the case of In re Rouse, Hazard & Co., 91 Fed. 96, decision by Judge Jenkins, of the circuit court of Appeals, for this circuit, it is said: "The bankrupt act by its terms, went into full force and effect upon its passage, July 1, 1898, and, notwithstanding the provision that no voluntary petition should be filed within one month of the passage of the act, and that no petition for involuntary bankruptcy should be filed within four months of the passage of the act, the bankrupt law was operative from the date of its passage, and was effective from that date to supersede the insolvency laws of the several states. Manufacturing Co. vs. Hamilton (Mass.), 51 N. E. 529; Blake vs. Francis-Valentine Co., 89 Federal 691; In re Bruss-Ritter Co., 90 Fed. 651."

In the same volume at page 237, in the case of Lea et al. vs. George M. West Co., the court holds the same doctrine and says: Coming to the consideration of what action should be taken by this court, where the state court has entered upon the administration of the trust estate by reason of the general assignment of the bankrupt, while every reasonable effort should be exerted to avoid even an apparent conflict of jurisdiction between state and federal courts, this case is apparently free from difficulty, as it will not be seriously maintained that the act of bankruptcy itself can be made the basis of dispossessing the bankrupt court of its juris-

diction. The constitution of the United States authorizes Congress, in its wisdom, to enact bankruptcy legislation, and when such action is taken it is the supreme law of the land on the subject. Under the recent act, the district courts of the United States alone are made courts of bankruptcy within the states, and are vested with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings. . . . The power of the bankrupt court in the premises is plenary, and under section 711, Rev. St. U. S., its jurisdiction in bankruptcy cases is superior to, and not concurrent with, the state courts."

In 92 Fed. on page 135, in the case of In re Smith et al. Judge Baker, the former judge of this district, held: That in the case of a voluntary assignment, where, the property was in the hands of the trustee under the deed, it was in *custodia legis*—in the custody of the court, under its control—"the administration of the debtor's estate so assigned is placed under the control and jurisdiction of the proper circuit court of the state." A motion was made in this court for a summary order to require the assignee to turn the property over to the receiver appointed by this court. And the court says: "The assignee under the inoperative state law takes no title, as against the creditors by the deed of assignment; and all of his acts touching the estate of the bankrupt, as well as all acts by the state court in the administration of the same, are unauthorized and void, and will be treated as nullities wherever drawn in question." The distinction was attempted here by one of the defendants while on the witness stand, between the jurisdiction of the person and the property of the bankrupt. He conceded that the Federal Court had jurisdiction of the person of the bankrupt, but claimed that it did not have jurisdiction of

the property. Judge Baker said: "No question of concurrent jurisdiction, or of the conflict of jurisdiction can possibly arise. The jurisdiction of the bankrupt court is supreme, it is exclusvie, and the acts of the state courts are unauthorized and void, because jurisdiction over the person and *estate* of the bankrupt is drawn to, and vested exclusively in, this court by the adjudication of bankruptcy."

In the same volume is the case of In re John A. Etheridge Furniture Company (92 Fed. 329), a case decided by Judge Barr, District Judge, the predecessor of Judge Evans, in the Louisville District. In this case W. W. Watts, one of the defendants here, appeared for the petitioning creditors and procured from Judge Barr a summary order—procured first the appointment of a receiver upon a petition in bankruptcy, and then procured a summary order requiring the assignee, I think it was, in a voluntary assignment proceeding, to forthwith turn that property over to the receiver of the Federal court. And in that decision, procured by this defendant Watts, the court said: "Subsection B of section 71, provides: 'proceedings commenced under said insolvent laws before the passage of this act shall not be affected by it.'" And the court proceeds: "This would clearly indicate that proceedings commenced after the passage of the bankrupt act can not be effectual to prevent the administration of the bankrupt estate in bankruptcy. To allow the bankrupt to select the trustee to administer upon his estate, instead of the creditor's, as provided in the bankrupt act, or to allow the state court to take jurisdiction of the estate of the bankrupt, and administer and distribute it, would effectually destroy the efficiency of any bankrupt act that might be enacted by congress, and thus effectually destroy the power granted to congress to pass a bankrupt act."

In 94 Federal, 633, in the case of *in re* Richard, decision by Judge Purnall, in the Eastern District of North Carolina, it is held:

> "Except as provided in the act, such as section 6, which provides that the passage of the act shall not affect the exemptions allowed where the bankrupt has his domicile, the state law is suspended and inoperative after an adjudication in bankruptcy. The bankrupt court takes jurisdiction *of the estate* and all matters pertaining thereto, and will administer the same to a final settlement."

In the case of Blake, Moffitt, and Towne v. Francis-Valentine Co., 89 Fed. 691, it is said:

> "But where the proceeding are involuntary the debtor is not, and can not be, adjudged a bankrupt until the return and hearing of the order to show cause, and will not then be adjudged a bankrupt if he has any good and sufficient defense."

In re Lady Bryan Ming. Co. (6 N. B. R. 262, Fed. Cas. No. 7980), where a creditor had filed a petition praying that the corporation might be adjudged a bankrupt, and at the same time obtained an injunction similar to the injunction in this case, the Court, upon motion to dismiss the injunction, held that the district court, as a court of bankruptcy, might, in the exercise of a lawful jurisdiction, restrain by injunction the sale of property under an execution issued from a State court before the commencement of proceedings in bankruptcy. In the course of the opinion, the Court said:

> "'Looking at the first section of the bankrupt act, it is difficult to imagine how a more unrestricted jurisdiction over matters in bankruptcy could have been granted. All the assets and all the parties in interest are to be brought before the court, priorities adjusted, liens ascer-

tained and liquidated, and the different funds and assets marshaled and distributed. The grant of these powers carries with it the right to employ such process, mode of procedure, and remedies as are indispensable to make the grant effectual. In this case the real estate levied on is assets and power to collect the assets is given. But this power is of no avail in this proceeding unless the court can preserve the assets until the question of bankruptcy is determined.'"

It was said upon the argument here, I may say, that the cases where summary proceedings have been authorized are cases in which there were voluntary assignments, where the assignment constituted an act of bankruptcy, but that no case can be found where the property was taken from a receiver of a state court. I have already cited several cases, one particularly by Judge Hodgett and one by Judge Seaman, in this circuit. In the case of *in re* Lengert Wagon Co., 110 Fed. 927, the court said:

"Certain judgments were entered against the Lengert Wagon Company in the Supreme Court of the State of New York and thereunder, on the 20th of September, 1901, property of the corporation was levied upon by the Sheriff of New York County under executions issued upon the judgments. Thereafter proceedings were instituted in the State Court by the directors of the corporation for a voluntary dissolution thereof on the ground of the insolvency of the corporation, and a temporary receiver of the property and effects of the corporation was appointed by an order of the court dated the 23d of September, 1901. On the 25th of September, 1901, involuntary proceedings against the corporation were commenced in this court. On the 27th of September, 1901, a receiver of the property of the bankrupt was appointed under section 2 (3) of the bankruptcy act, and an attempt made by him to obtain possession of the property. This was resisted by the receiver and sheriff in the State Court and the receiver in this court now

applies for an order specifically directing those officers to turn the property over to him. The contention on their part is that, as the state court obtained jurisdiction of the matter and possession of the property before the proceedings were instituted in this court, the possession can not be disturbed by process issued from this court; citing In re Chambers 3 Am. Bank R. 537, 98 Fed. 865; Trust Co. v. Bembow, 3 Am. Bank R. 9; 96 Fed. 514. But the proceeding in the State Court is one incident to the insolvency of the corporation, and it seems to be well settled that the bankruptcy gives exclusive jurisdiction to the United States Court in such matters, where proceedings are properly instituted, and ousts the State Courts of all jurisdiction with respect to the possession or distribution of insolvent estates. Tua v. Carriere, 117 U. S. 201; In re Smith, 92 Fed. 135; In re Independent Ins. Co., Fed. Cas. No. 7018; Thornhill v. Bank, Fed. Cas. No. 13992; Griswold v. Pratt, 9 Metc. (Mass.) 16; In re Storm 103, Fed. 618."

In the case of *in re* Storck Lumber Co., 114 Fed. 360, decision by Judge Morris in the eastern district of Maryland, where a proceeding was brought by a stockholder against the corporation alleging its insolvency, a receiver was appointed, and subsequent to the appointment of that receiver in the State court an involuntary proceeding in bankruptcy was commenced in the United States District Court, and the question directly arose as to whether the receiver appointed in the bankrupt proceedings was entitled to take the possession of the property away from the receiver of the State court. The Court held that he was so entitled and said: "The Maryland Statutes for winding up insolvent corporations is in the nature of a proceeding in insolvency." . . . "The National Bankrupt act of 1898 superseded the State insolvent laws, and now, when commercial and manufacturing corporations are so numerous, and are sometimes used, as in this case, more as a cover from individual liability

than for legitimate uses, it can hardly be supposed as the bankrupt act especially provides for proceedings against commercial corporations, that it was intended that such a corporation could commit acts of bankruptcy and escape the provisions of the bankrupt act by applying to be wound up under the State statute, and thus defeat the operation of the bankrupt law." Citing a number of cases. As I have said, the circumstances surrounding the institution and progress of the suit down there at New Albany show that M. Zier, the principal stockholder and Vice-President and Manager of the corporation, selected the receiver, and it was just as much the act of the Bankrupt as if it had made a voluntary assignment and selected the trustee.

Now on this question of summary proceedings, without taking the time to go over it, the Supreme Court of the United States has held as late as the case of White vs. Schloerb, 178 U. S. 542, that the district court sitting as a court of bankruptcy has the power by summary proceedings to take from an officer of a state court property which belongs to the bankrupt estate. It has been decided in several of the cases which have come before the Supreme Court of the United States that that power exists and the only question made in those cases was as to whether or not the possession of the person from whom the property was sought was adverse; and as I have stated here before, when that question was here originally before this court, that was the contention made by the counsel for the receiver in the state court. But it has been decided by the Supreme Court of the United States several times that an assignee in the case of voluntary assignment does not hold adversely. It has been decided that a purchaser who purchases from an assignee under a voluntary assignment does not hold adversely, and that property can be taken from such purchaser

by summary proceedings. It has been held where a petition was brought against a man to put him into involuntary bankruptcy, that his agent, who had received from him cash prior to the institution of bankruptcy proceeding, could be compelled by a summary proceeding to turn that cash over to the trustee.

The Federal Courts, the bankruptcy courts, have in a number of cases in addition to those which I have cited, held that the jurisdiction is exclusive and the power to issue a summary order does exist.

But that is not all. The Supreme Courts of many of the states have gone farther than the Federal Courts. In the case of Lothrop vs. Highland Foundry Company, 128 Mass. 120, in a decision by Judge Gray, who was then chief justice of the Supreme Court of Massachusetts and who was afterwards as you all know an associate justice of the Supreme Court of the United States, who decided the case where property had been sold to a purchaser as I have stated, used this language in speaking upon the question as to whether or not an enactment of a bankrupt law suspended the state law:

> "The omission of the legislature of the commonwealth to make any regulations whatever as to the suspension or revival of the operation of the insolvent laws, by reason of the contemplated or the actual enactment or repeal of the last bankrupt act, can hardly be explained on any other hypothesis than that it was considered to be settled by the judgments of this court, that no such legislation was necessary, either to suspend the operation of the insolvent laws so long as the bankrupt act continued in force, or to revive the operation of all the provisions of the insolvent laws, as if they had never been suspended, so soon as the bankrupt act was repealed: and that the effect, and the only effect, of the bankrupt act upon the insolvent laws was to suspend, so long as it was in force, the *right to institute* proceedings under those laws in cases within its provisions."

The Supreme Court of Massachusetts in a recent case, decided since the present bankrupt law went into force, Parmenter Mfg. Co. v. Hamilton, et al, 51 N. E. 529, goes over this whole question and among other things says:

"The question in this case is whether this act so far superseded the insolvency laws of this commonwealth from the time of its passage as to deprive our courts of jurisdiction to entertain petitions for the commencement of insolvency proceedings filed after July 1, 1898. This depends upon upon the intention of Congress, as manifested by the language above quoted. Of the power of Congress to pass an act having this effect there is no doubt. Constitution of U. S., Art. 1, Sec. 8, Cl. 4; Griswold vs. Pratt, 9 Metc. 16; *in re* Kline, 1 How. 277, 280; Sturgress vs. Crowninshield, 4 Wheat. 122, 192; Ogden vs. Saunders, 12 Wheat. 213, 369. The language is materially different from that of the bankruptcy act of 1867, and from that of the earlier bankruptcy law of 1841. . . . The argument that the change in question was intentional is almost irresistible. The act is 'to go into full force and effect upon its passage;' that is to say, the rights of all persons in the particulars to which this act refers are to be determined by the act from the time of its passage. Among these rights is the right to have insolvent estates settled in bankruptcy, under the provisions of the act, including the rights to have acts of bankruptcy affecting the settlement of estates, determined by it, to have the rights of debtors to file voluntary petitions, and of creditors to file involuntary petitions, determined by it, and to have preferences and liens governed by the provisions of it. These provisions affecting the rights and conduct of debtors and creditors are different from those previously existing in most of the states, and perhaps different from those found in the laws of any state, and they supersede all conflicting provisions. The only limitation upon the full and complete operation of the act upon its passage is that the right to begin proceedings is postponed one month in the case of voluntary petitions and four months in the case of involuntary petitions. Whenever the proceedings are commenced the conduct of the parties after

the passage of the act is to be tested by its requirements. The only saving clause affecting the jurisdiction of State courts, provides for cases commenced in those courts before the passage of the act. The plain implication is that proceedings commenced in the State courts after the passage of the act are unauthorized. This is in accordance with the earlier language giving the statute full force and effect from the time of its passage, except that the filing of petitions is to be postponed for a short time. We are of the opinion that the language was chosen to make clear the purpose of Congress that the new system of bankruptcy should supersede all state laws in regard to insolvency from the date of the passage of the statute."

The Supreme Court of Illinois, in the case of Harbaugh v. Costello, *et al.*, 56 N. E. 363, decided this question the same way. In that case a proceeding was attempted in the state court under the insolvency laws of the State of Illinois, after the passage of the bankruptcy act, when no proceedings had been commenced or attempted to be commenced in bankruptcy; and yet the state court held that it was without power or authority after the passage of the bankrupt act to entertain jurisdiction of such a suit. The court by McGruder, J., say: "It is provided in section 8 of the first article of the constitution of the United States that 'congress shall have power . . . to establish . . . uniform laws on the subject of bankruptcies throughout the United States.' In interpreting this provision of the constitution, it has been held that the power to pass insolvent or bankrupt laws was not thereby taken away from the states until congress itself should exercise the power thereby conferred by the passage of a bankrupt law. When, however, a bankrupt law is passed by congress, any state law upon the subject which may exist is suspended in its operation. As soon as a national bankruptcy act goes into effect, state insolvency laws are suspended and become inoperative, at least so far as they conflict with

the acts of congress upon the subject, and so far as the embrace the same subject matter as is embraced in the act o congress."

And, citing from Black on Bankruptcy, the Court says:

> "The passage of a national bankruptcy law b congress renders it supreme. The state laws in forc must yield to it, and can no longer operate upon person or cases, within the purview of the federal statutes. Th latter does not, indeed, repeal or destroy the state law on the same subject, but it suspends their operation. I the state law and the federal act operate upon the sam subject matter, upon the same property, upon the sam rights, and upon the same persons, creditors as well a debtors, or may so operate, they can not go togethe without direct and positive collision, and is such cas the federal enactment suspends or supersedes the stat law."

In the case at bar, as I have said, there was a deliberat attempt on the part of the Floyd Circuit Court to set up court of bankruptcy. It is in evidence here that the entir property of this now bankrupt corporation was placed in th hands of the receiver of that court, every asset which i owned. The purpose, object, scope and effect of that pr ceeding was to wind up that insolvent corporation and di tribute its assets among its creditors. In substance an effect it was a bankruptcy proceeding by a court whic constituted itself, against the constitution and the laws o United States, a bankruptcy court. Since the issuing o the citation for contempt herein, Kelso, the receiver of th state court, has delivered the plant and property of th bankrupt to the receiver of this court without any orde of the state court in the premises, and the receiver of thi court is now in possession of the same. If the possessio of the receiver of this court was illegal when the propert

was wrested from him, it is illegal now. Since the commencement of the trial of these defendants, owing to the startling disclosures made in the evidence here, the fraudulent preference of $9,600 has been returned and paid in money to the receiver of this court.

If counsel for these defendants are right in their contention that the receiver of the state court is entitled to the possession of the plant, we shall then have the property of the bankrupt divided between this court and the state court and each of these courts will distribute a part of the estate between the same creditors and at the same time.

If the exclusive jurisdiction of the bankruptcy court is not upheld or is subordinated to some indefinable rule of comity, which is superior to the law and to the legal rights of parties, such a case of divided jurisdiction may arise at any time.

It has been said that if the amendment of February 5, 1903, had been in force when this State Court receiver was appointed, that then, following the analogy of the voluntary assignment cases, the receiver appointed by this court would have the power summarily to take charge of the property. But it is maintained that the amendment of February 5, 1903, was not in effect, so far as any act of bankruptcy, prior to the time of its passage, is concerned. This amendment took effect on February 5, 1903. On February 6, 1903, these proceedings in involuntary bankruptcy were commenced. Shortly after the original petition was filed, an additional petition, or an additional cause was alleged in a supplemental petition filed under this amendment, reciting the fact that a receiver had been appointed in the State Court at New Albany for M. Zier and Company. The question now is whether or not after the passage of this amendment the appointment of a receiver, or the having suffered a receiver

to be appointed within four months prior to that time, constituted an act of bankruptcy? It has been said that the question here is whether or not that amendment has a retroactive effect. It is well understood that congress has the power to pass retroactive laws if it sees fit. The question then, is, whether or not congress clearly intended the amendment to be retroactive in this respect.

In the original act it was specifically provided that the act should go into force and effect on the first day of July, 1898. It was further provided that no petition for voluntary bankruptcy should be filed within one month, and no petition for involuntary bankruptcy should be filed within four months thereafter. When this amendment was made no such provision was put into it, and the last clause of it, the last section of it, provides:

> "The provisions of this amendatory act shall not apply to bankruptcy cases pending when this act takes effect, but such cases shall be adjudicated and disposed of conformably to the provisions of the said act of July first, eighteen hundred and ninety-eight."

To my mind the fact that in the original act it was provided that no petition for voluntary bankruptcy could be filed within one month of the taking effect of the act, and that no petition for involuntary bankruptcy could be filed within four months of its taking effect, while in the amendatory act there is no postponement of the time, clearly indicates that congress intended its provisions to apply to any act of bankruptcy defined by its terms committed within four months prior thereto. It seems plain that when congress passed this amendment and made no provision for the postponement of its effect, that it intended that it should go into effect immediately.

Not only that, but the wording of the amendment is very suggestive. The original act provides: "Acts of bankruptcy by a person shall consist of his having . . . or (4) made a general assignment for the benefit of his creditors." Now this fourth sub-division is amended as follows: "Or (4) made a general assignment for the benefit of his creditors, or being insolvent applied for a receiver or trustee for his property or because of insolvency, a receiver or trustee *has been*, put in charge of his property under the laws of a state, of a territory, or of the United States." If it was intended that that amendment should have only a prospective effect, why didn't the act say "a receiver or trustee *shall be* put in charge of his property under the laws of a state, of a territory or of the United States?" But it is not necessary for this court to decide this point, and I do not decide it now. If this act took effect from and after its passage in the sense that the appointment of a receiver within four months prior to the filing of the petition in this case, constituted an act of bankruptcy that gave the court jurisdiction, I believe this to be the law, and if it were necessary to decide it in this case, I should so hold until some higher authority declared the law to be otherwise.

But aside from this additional cause setting forth the appointment of the Receiver there were in this petition legal and sufficient causes for an adjudication of bankruptcy alleged; and since the filing of the petition the proper notices have been given, the proper time has elapsed, the alleged bankrupt and those interested in it have suffered a default, and the corporation known as M. Zeir and Company has been adjudged by this court a bankrupt. So the authorities are, I think, plain, that when this court appointed Mr. Connor as Receiver, it had the power to arm that Receiver with sufficient power to take that property from

the Receiver of the State Court. If that is not the law, then a number of judges, including some of the best in the country, have been badly mistaken.

But that is not the question here. These defendants are not charged with resisting any summary order of this court. Why, gentlemen have with so much vehemence and vociferousness argued that question before this court, the court itself can not understand. That is not the question here at all. The facts in this case and the records in this court show that after Frederick D. Conner was appointed Receiver by this Court, the property which was then in the possession of the Receiver of the Floyd Circuit Court, as I have stated, was voluntarily and freely turned over to him as Receiver of the United States Court. For two days he held that possession, and after night, as I have said, certain persons went to that plant and forcibly ejected the Receiver of this Court from that property. The question here is: Was that a contempt of this Court? The men who committed the overt acts on that night have been found guilty of contempt, and a portion of them have suffered their punishment, and the remainder of them are now suffering theirs. The question here is: Whether or not as against the defendants, they not being present at the former trial, they are entitled to have it considered in that way; whether or not the persons who took forcible possession of this property away from the Receiver of this Court were guilty of contempt of this Court; and, in the second place, if such persons were guilty, did these defendants, or either of them, aid, encourage, counsel, command, or assist those persons in doing that unlawful act?

It was stated here yesterday upon the argument that this Court had the undoubted legal right to the possession of this property, but complaint was made of the manner in which it

got the possession. It is the first time that ever the Court has heard that complaint could be legitimately made as to the manner in which a person obtained possession of the property which he was conceded to have the lawful, legal, undoubted and exclusive right to the possession of. That the persons mentioned, with these defendants, in disregard of the process and orders of this court, went after night and with force wrested the property from the receiver of this court, there is no question. But it has been said that there is a certain thing which is above law, and that is comity, so called. It was announced here yesterday as a doctrine of necessity, and it was gravely argued, (I think I put it mildly when I say earnestly argued), that such comity exists between the federal and state courts that it was the duty of the receiver of this court to go into the Floyd Circuit Court, subject himself to the jurisdiction of that court, and humbly ask that court for an order requiring its receiver to turn this property over. It apparently was forgotten that that comity and courtesy was extended to the Floyd Circuit Court; that the receiver of this court went into that court and respectfully petitioned the judge of that court to order his receiver to turn it over, as by law all men must concede he was bound to do. But he not only did not rule upon the petition; he contemptuously ignored it, and as I have said continued it until the next term. After the removal of the receiver of the state court, who turned the property over to the receiver of this court, the Floyd Circuit by a series of forged records appointed Mr. Kelso as receiver. Now counsel who argued the law of this question yesterday spoke frequently about the converse of the propositions that he was arguing. If comity required the receiver of this court, which had exclusive jurisdiction, to go into a state court, which had no jurisdiction, and

humbly ask that court to order its receiver to turn the property over to him, why was not Mr. Kelso, the receiver appointed by that court, in duty bound, in exercising this same generous principle of comity, to come to this court and ask this court to order its receiver to turn the property over to him? He did not do it. He went after night by force and took possession of the property.

Now a great many authorities were cited here yesterday by counsel who argued the law question, in which expressions were used about the orderly procedure in courts. I want to ask who has been guilty of the breach of the orderly procedure? This court in the exercise of its undoubted constitutional and legal authority appointed a Receiver to take possession of this property. In an orderly and regular manner he went before the Floyd Circuit Court and asked that that property be turned over to him. Subsequently it was turned over to him. There was another Receiver appointed by the Floyd Circuit Court, and in defiance of the orderly and regular procedure that has been so much talked about, Mr. Kelso, instead of coming up here, as he ought to have done, if he was in earnest and thought he was right, went after night and pitched the Receiver of this Court out of that plant.

A number of cases were cited here yesterday by counsel who argued the legal questions that were supposed to be involved here, to the effect that in certain cases where State Courts had clear jurisdiction, Federal Courts would not interfere; and with a good deal of emphasis, a certain case decided by Chief Justice Fuller, and reported in 23 Supreme Court Reporter, at page 67, was exploited as the latest decision of the Supreme Court of the United States upon the questions there involved, (Metcalf v. Barker, 187 U. S., —). During this argument I called attention of the

counsel to the case of Clark v. Larrmore, decided by the Supreme Court of the United States. I stop by the way to say that the case of Metcalf v. Barker was decided December 1st, 1902, and this case of Clark v. Larremore, which I have here upon my desk, the opinion being written by Mr. Justice Brewer was handed down on February 23, 1903. The case of Metcalf v. Barker, decided by Mr. Chief Justice Fuller, holds this :—and I stop long enough to call attention of counsel to it: "Judgment creditors of a bankrupt by commencing a judgment creditors' action more than four months before the petition in bankruptcy is filed acquired a lien on the property of the bankrupt, of which they are not deprived by the bankruptcy act of July 1, 1898, section 67 f, because the judgment enforcing the lien is recovered less than four months prior to the filing of such petition, although by that section all judgments obtained against the bankrupt within that period are avoided, as this provision must be regarded as referring only to judgments creating liens, and not to the judgments which enforce an otherwise valid, pre-existing lien." I have not had the time to go through all the cases cited by counsel for the defendants from Peck v. Jenness, in 7th Howard, I believe it is, down to Clark v. Larremore, decided February 23, 1903; but I think I am safe in saying that not one of those cases which apparently sustain the contention of the gentlemen here, differs from this case of Metcalf v. Barker, in this essential particular, namely, that each one of them was a suit to enforce a valid pre-existing lien. This Court does not doubt that a lien existing prior to four months of the filing of a petition in involuntary bankruptcy, the enforcement of which is being attempted in a state court prior to the filing of the petition in bankruptcy can not be disturbed by the summary process of this court. There is no question about

that. But the bare statement of the question shows that it has no application here. And in this decision of Clark vs. Larremore of February 23, 1903, the distinction is squarely drawn between the cases cited to the Court and other cases which might be mentioned. I will call the attention now of the gentlemen to this case. It has been gravely argued here that when once the state court gets jurisdiction of property, that then this court can not disturb its possession without its assent. The case which I hold in my hands arose upon this state of facts; one man procured a judgment against another, had an execution issued, placed it in the hands of the sheriff, and the sheriff levied upon the defendant's land, sold it, and had something like $12,000 of the purchase money in his hands. At that time, after the judgment had been rendered in the state court, after the execution had been issued and levied, after the property had been sold and the money was in the hands of the sheriff, an involuntary petition in bankruptcy was filed against the debtor, and by summary order issued by the bankruptcy Court, the sheriff was ordered to turn the money over to the Trustee.

And the Supreme Court of the United States held that that was proper.

That is what Justice Brewer says:

"The judgment in favor of petitioner against Kenney was not like that in Metcalf v. Barker (187 U. S. ———), one giving effect to a lien theretofore existing, but one which with the levy of an execution issued thereon created the lien." And that is what makes the difference.

So then this court is of the opinion that it had the power when this application for a receiver was made to appoint a receiver; that it had the power by summary process to take the property from the receiver of the state court and place it in the possession of the receiver of this court.

But as I have said, that is not the question here. The court holds that this property having been placed peaceably, quietly and voluntarily by the then custodian of it in the possession of the receiver of the United States court, all persons who thereafter interfered with that possession, knowing the facts, are guilty of a gross contempt of this court.

Considerable has been said about the power of this Court to punish for contempt. Some discussion has been had as to whether or not it is an inherent power, or whether or not it is given by Section 725, of the judiciary act. The question has been raised as to whether that act has conferred the power or is a limitation upon it. This Court does not think it makes a particle of difference which view is correct, especially since it is given the power in the bankrupt law itself. Section 2 of the bankrupt act of 1898, in enumerating the powers of courts of bankruptcy, under subdivision 13, of Section 2, says: "To enforce obedience by bankrupts, officers, and other persons to all lawful orders, by fine or imprisonment, or fine and imprisonment;" so that whatever may be said about the source of the power, it is there sufficiently given in the bankrupt act itself. This Court has no doubt whatever that Kelso, and those with him, who went down on that Friday night and took possession of this property were guilty of a flagrant, a gross contempt of this Court. And they have been punished therefor.

The question now before this Court is, whether or not these defendants or either of them had such connection with that transaction as to make them guilty also? The evidence shows that when W. W. Watts agreed with Mr. Jewett to turn this property over to the Receiver of the United States Court, and left Indianapolis, that he went to Louisville, his home. He himself swears that the nearer he got to Louis-

ville the more he thought he had done wrong in voluntarily offering to turn this property over. He went to his friend Sachs, the other defendant, and procured him to go with him to New Albany the next day for the purpose, as they claim of making peace for Watts with Judge Utz. W. W. Watts, and his brother J. R. Watts, D. A. Sachs, and both his brothers, Morris Sachs and Joseph Sachs, have testified that W. W. Watts is a very busy man with a large practice in Louisville; that D. A. Sachs is a very busy man with a large practice in Louisville. The uncontroverted fact is that both of these gentlemen went to New Albany on Wednesday, the 18th day of February, and spent the entire afternoon there. They spent most of the day Thursday there. They spent most of Friday there. They spent, if I remember the evidence right, most of Saturday there. What were they there for? According to their testimony they were there to appease the wrath of Judge Utz.

So far as the defendant Sachs is concerned the evidence hereby clearly shows that he took an active part in the proceedings which culminated in the removal of the New Albany Trust Company by the Floyd Circuit Court and in the appointment of Mr. Kelso as the receiver of that court: that it was upon a petition sworn to and largely prepared by him that the court acted in the removing of the New Albany Trust Company and in appointing Kelso as receiver; that he was there during the consultation with reference to the matter; that he aided and assisted in planning the line of battle for taking the property from the receiver of this court; that he assisted in the preparation of the processs issued to the sheriff under which the sheriff acted; and this court has no doubt whatever that he was at the plant of M. Zier and Company Saturday afternoon after Kelso was in possession, with Kelso looking over the plant, and making preparations with regard to the running of it.

It has been said here in argument by counsel that there is an irreconcilable conflict in the evidence. It is so stated by counsel on both sides. It has also been stated by counsel that it is not their province to say where the truth lies and who committed perjury. It is the province of the court to say where the truth lies and this court believes that D. A. Sachs in many important and material particulars committed willful and corrupt perjury in this case. The stenographer of Mr. Kelso, who has no interest whatever in this case, swears positively that Mr. Sachs took an active part in the preparation of the instrument which he signed and swore to. She swears positively that he took an active part in the preparation of the papers and proceedings which were immediately used to wrest the possession of this property from the receiver of this Court. Mr. Kelso swears the same thing, and Judge Utz swears the same thing. Kelso swears that Mr. Sachs was with him in the plant looking it over on Saturday, canvassing the situation, and advising with reference to starting the plant and that it was agreed between them that the plant should be started on Monday. Mr. Ruoff, who was the night watchman swears Sachs was there. Another gentleman, a deputy clerk, swears that he met Sachs on the street in New Albany, that evening when Sachs told him he had been out to the plant and he did not think the property was worth $5,000.

That Mr. Sachs has taken the witness stand here and has deliberately sworn that he had nothing to do with the preparation of that answer, that he can not deny that he signed it and swore to it, because it is in evidence in the record, but that he had nothing to do with its preparation, that he had nothing whatever to do with the proceedings which culminated in the wresting of this property from the receiver of this Court, that he was not at the plant that afternoon. So

I say that this Court has concluded that he committed willful and corrupt perjury here.

Another circumstance; Mr. Sachs testified that when he left Judge Utz on Wednesday evening, Judge Utz requested him, who, until that afternoon, was a stranger to him, a resident of Louisville—Mr. Sachs had never transacted any business as I recall the evidence in New Albany prior to that time—that Judge Utz requested him and Watts, both strangers in New Albany, to notify counsel interested in this case, for the creditors to appear in his chambers next morning. Going from Judge Utz's office they went to Jewett's office. It is in evidence here, and there is no dispute about it, that Mr. Jewett called up Mr. Kelso that afternoon over the telephone and asked him how long he would be in his office and told him to wait that some people would be over to see him. There is no question that Watts and Sachs went over to see him that afternoon, and that they were there from a half to three quarters of an hour, and yet Sachs took the witness stand and swore that the only purpose they had in going to Kelso's office that evening was to notify Kelso that Judge wanted to see him in chambers next morning. As has been well said, it is a remarkable circumstance that Judge Utz should call upon these Louisville lawyers, strangers to him, to run errands for him, and it was a remarkable circumstance if the only purpose and object of their visit to Kelso's office that evening was to notify Kelso that Judge Utz wanted to see him the next morning; that he should not have had Henry Jewett tell him when he called him over the telephone that Judge Utz wanted to see him at his office next morning. And it was a remarkable circumstance that they should have gone to Kelso's office, these busy men, who did not want any business this side of the river (they say they have all on the other side they can attend to),

should go to Kelso's office that afternoon and spend from a half to three-quarters of an hour with him. So I find that Mr. Sachs is guilty of a flagrant contempt of this Court.

It is claimed for Mr. Watts that he went to New Albany and did everything he could to turn this property over to the receiver of this court. The evidence shows that Watts was continually declaring and protesting that this property should be turned over. Counsel for Mr. Watts, in the argument in his behalf yesterday afternoon, spoke of the responsibility which this court has, and the power which it has. I trust I fully realize the responsibility which is imposed upon me in this case; I know I take no pleasure in exercising the powers which are incident to my present position. Counsel in that same connection said that Mr. Watts, according to the evidence, had not done one thing or said one word, that no witness had testified to his having done one thing or said one word in furtherance of this wrongful enterprise.

Until Mr. Watts returned to Louisville and procured his friend Sachs to go to New Albany, Mr. Sachs was a stranger to that proceeding. Mr. Watts undoubtedly got Mr. Sachs into the proceeding. He was over there Wednesday. The evidence in the case shows that when Judge Utz finally decided, at whose instance I know not, to cite the New Albany Trust Company before him for contempt, that Mr. Watts respectfully requested that he be cited also. It is in evidence before this Court that before Mr. Watts was served with the citation to appear and answer the charge of contempt in the Floyd Circuit Court, he informed the gentlemen that he was going to a restaurant or saloon, I have forgotten which, where he would be, and to send the Sheriff there to serve him. He was in New Albany, during all the time that these proceedings were planned and he returned to

Louisville with Mr. Sachs late in the evening of Friday, only a short time before the final proceedings were taken to throw the receiver of this court out of the possession of that property.

I understand these gentlemen, in order to be punished must be found guilty beyond a reasonable doubt, but I do not understand that this Court is bound by the denials of Mr. Watts. If the circumstances surrounding this transaction clearly established to this Court's mind beyond a reasonable doubt that notwithstanding Mr. Watts' protestation and declaration as to his intention and desires—that notwithstanding that, if through Mr. Sachs or by assisting Mr. Sachs he had anything whatever to do with the transactions which culminated in this unlawful act, he is guilty and this Court must find it, if the evidence shows it. Mr. Watts, his counsel, asks this Court to believe, throughout those four days, when the evidence in this case shows that he was associating with Judge Utz socially, drinking with him in saloons, hobnobbing with him, in the language of the street, during those four days, was there with his friend Sachs for no other purpose than to appease the wrath of Judge Utz against Watts. It is needless for me to say that this Court does not believe one word of it—not one word of it. I can not believe it. The only solution of his conduct that can be reached consistently with the evidence is this; according to his own testimony, the nearer he got to Louisville, the more he concluded that he had made a mistake in offering to turn the property over. But he had offered. Mr. Watts is one of those lawyers who prides himself on keeping his agreements made in court. I have known many such. Therefore, he did not wish to put himself in the position of openly violating the voluntary promise he had made in this Court. So he procured his friend Sachs to go with him to

New Albany and Sachs is put forward as the active manager of this thing and Watts remains in the background and continually protests that he wants to turn this property over and keep his agreement with the United States Court. He is like some other people. He protests too much. So I have come to the conclusion that Mr. Watts is guilty of a flagrant contempt of this Court.

Up to this time, so far as the law is concerned, my way seems to be clear. If I am mistaken about it, the gentlemen have their remedy. If this Court were infallible there would be no need for the Circuit Court of Appeals and still less need for the Supreme Court of the United States. It is the duty of this Court, in so far as it can, to ascertain what the law is, and, having ascertained what it is, as nearly as possible, to so declare it. I have not had much difficulty in coming to the conclusion that this Court had jurisdiction to do what it has done. I have not had much difficulty in coming to the conclusion that these defendants have been guilty of contempt of this Court. But the question as to what punishment should be meted out to them has given me considerable trouble. It has been a matter of considerable concern to me that at the very beginning of my career here, I have been confronted with this state of affairs. I can not but believe that the gentlemen who have taken part in these proceedings forget that it makes no difference who occupies this bench. The court is the same. My professional experience, has been confined largely to the state courts, and those courts with which I have been familiar were pervaded with an atmosphere of respect and reverence for the dignity and power and purity of the United States Courts. And when it became apparent to the present occupant of this bench that any court, or any officer of any court, or any person

within the district would undertake to do what these gentlemen have done, it was a matter of very great astonishment to me. I was urged to exercise the extreme powers of this court at once. I delayed. When the gentlemen were here before me on the 17th of February, after a full discussion on their part, in which I indulged them far more than they were entitled to, they voluntarily offered to turn this property over, and they did it. And therefore, that such a proceeding as did happen should happen was a matter not only of surprise, but of the utmost consternation, I think, to everybody, as well as to this court. If this court is going to administer justice as it sees it, it necessarily follows that the dignity and the power of the court must be maintained. All men, and lawyers especially, must understand that if they disagree with the court in any order it makes, they must not set themselves up to resist those orders. I have decided in this case—and I dislike exceedingly to do it—but I have decided in this case that my duty compels me to imprison these men. The only question in my mind is as to the term.

Evidence has been introduced as to their previous good standing. I believe both of them realize the mistake they have made and the wrong they have done. If they had come to this court even upon the service of the citation to show cause, and had acknowledged their wrong, it might have been different. They are lawyers; they have here, by their counsel, after a manner which I think is not entirely excusable, criticised the action of this court. They have asserted here, by their counsel, that this court has assumed a jurisdiction it did not have and has issued orders it had no lawful authority to issue. They have, through their counsel urged that, but on the witness stand, as witnesses, they have apparently tried to convey the impression to this court that they

recognized the lawful authority of the court to act—that they recognized it from the beginning. Indeed, Mr. Sachs swears that he himself said, when he heard of the order of February 17th, "That ends it." In other words, while through their counsel, they attack the jurisdiction of this court and loudly proclaim that this court has exceeded its powers and jurisdiction, that the orders which they have violated were no orders at all, and they have a right to violate them, they, on the witness stand, have conceded that the authority was rightfully exercised, and they ask this court to believe that they have done nothing whatever to interfere with it.

The sentence of the court is (and Mr. Sachs and Mr. Watts may stand up) that you are each guilty of a contempt of this court, as charged in the information and in the rule to show cause, and that you stand committed to the jail of Marion County for sixty days and pay the costs taxed against you, and the marshall is charged with the execution of this judgment.

And afterwards, to-wit: on the 14th day of March, 1903, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled matter were had, to-wit:

Come now the defendants William W. Watts and D. A. Sachs and file their Bill of Exceptions in the above entitled matter in the words following, to-wit:

Be it remembered that upon the calling of these proceedings for trial as to the defendants D. A. Sachs and William W. Watts, the said defendants enquired of the Court whether they were required to respond to the rule awarded against them in the above entitled bankruptcy proceedings, or to plead to the above entitled information filed by the United States District Attorney, whereupon the Court ruled and adjudged that the said defendants are re-

quired to respond to said rule and plead to said information con-jointly, and thereupon the said defendants each filed a separate response and plea.

Be it further remembered that upon the trial of said rule and information as to said defendants, the evidence of sundry witnesses was taken on behalf of the United States, and the evidence of sundry witnesses was taken on behalf of said defendants, and each of them, and certain documentary evidence was adduced on behalf of the United States, and also on behalf of said defendants, and each of them, all of which appears in full, together with the objections made thereto by either party and the rulings of the Court thereon and the exceptions thereto in the report of the Official Stenographer of this Court, which said report is here referred to, and filed herewith marked "X," and said evidence adduced and heard was, and is all the evidence adduced, and heard upon the trial.

Said stenographic report is made a part of this bill of exceptions, and is made part of the record.

And this bill of exceptions, being examined and approved by the Judge of this court, is signed by him, and filed, and made part of the record this 14th day of March, A. D. 1903.

ALBERT B. ANDERSON,

Judge.

Exhibit C.

Joseph T. Ryerson & Son
vs.
M. Zier & Co.
} No. 5575.

Comes now Frederick D. Connor as receiver by George H. Hester his attorney, and by leave and order of the Court and upon his own motion, makes himself a party to this proceeding, and thereupon by leave of the Court files his verified petition showing his appointment as receiver of said M. Zier & Co. by order of the United States District Court for the District of Indiana and praying this Court for an order requiring the said New Albany Trust Company, as receiver of said M. Zier & Co. to turn over and surrender to him said Frederick D. Connor, as receiver in bankruptcy, the property of said M. Zier & Co. of which the said New Albany Trust Company as receiver of said M. Zier & Co. under the orders of this Court is custodian and the matter of said petition is now continued until the next term of this Court.

IN THE FLOYD CIRCUIT COURT.

JANUARY TERM, 1903.

Jos. T. Ryerson & Son
vs.
M. Zier & Company.
}

To the Honorable W. C. Utz, Judge of the Floyd Circuit Court:

Frederick D. Connor, receiver appointed by the United States District Court for the District of Indiana, intervening in the above entitled cause, respectfully shows to the court:

That on the 11th day of February, 1903, by the con-

sideration of the United States District Court for the District of Indiana, upon the petition of the Inland Steel Company, John C. Thurston and John Dey, doing business as Dey Time Register Company, he was appointed by said court as receiver, with authority to take charge of all property of said M. Zier & Company and to hold the same in his custody until the further order of said court; that he has duly qualified as such receiver according to the requirements of the order appointing him, by filing his bond therein to the approval of the Hon. Albert B. Anderson, Judge of said court, and is ready to assume control of the property of said M. Zier & Company as soon as the same is turned over to him by the New Albany Trust Company, heretofore appointed as receiver in this cause by this court; a certified copy of the order of the United States District Court is filed herewith and attached hereto marked exhibit "A."

Your petitioner therefore, respectfully prays that said The New Albany Trust Company be directed and required to immediately turn over to this petitioner all of the property, assets, books, moneys and other effects of said M. Zier & Company now in its possession and control and to immediately file with this court its account in writing, showing the amounts of money collected by it and now on hand. The petitioner further prays that said The New Albany Trust Company be discharged as such receiver herein.

FREDERICK D. CONNOR,
Receiver of M. Zier & Company.

STATE OF INDIANA, }
County of Floyd. } *ss.*

Frederick D. Connor, being duly sworn on his oath says that the matters stated in the foregoing petition are true in substance and in fact as he verily believes.

FREDERICK D. CONNOR.

Subscribed and sworn to before me this 14th day of February, 1903.

CHARLES B. SCOTT,
Clerk F. F. C.
By William F. Ruoff,
Deputy.

INLAND STEEL COMPANY }
vs. } In Bankruptcy.
M. Zier & Company. }

Comes now the Inland Steel Company, petitioner in Bankruptcy herein, which having filed its petition to have M. Zier & Company declared a bankrupt, now files its verified petition alleging that an emergency exists for the immediate appointment by the court of a receiver herein to take charge of the property and effects of said M. Zier & Company pending the hearing of said petition and the appointment of a trustee in bankruptcy herein, which petition reads as follows: (here insert).

And the court being advised after due consideration, finds that the prayer of said petitioner ought to be granted and that a receiver ought to be appointed to take charge of the property and effects of said M. Zier & Company previous to the hearing of said petition and the appointment of a trustee herein.

It is therefore considered and ordered by the court that Frederick D. Connor, be, and he is hereby appointed as receiver herein of the property and effects of said M. Zier & Company, with authority to take charge and possession of all the same and particularly the goods, wares and merchandise, books, papers and effects of or belonging to said M. Zier & Company located at the city of New Albany, Floyd County, Indiana, and now in the hands of The New Albany Trust Company as receiver of said M. Zier & Company appointed by the Floyd Circuit Court, of Floyd County, Indiana. And said receiver is ordered and directed to take into his possession the sheet iron and boiler manufacturing plant in said city of New Albany, together with all the tools, machinery, appliances, material and finished products within and about said plant at said city of New Albany, which plant is located at the corner of Pearl and Oak streets of said city, and all other property of said M. Zier & Company wheresoever found and situated.

It is further ordered and adjudged by the court that The New Albany Trust Company be, and it is hereby required to deliver up to said Frederick D. Connor as receiver of the said property and effects of said M. Zier & Company now in its possession and to refrain hereafter from interfering in any way with the said receiver's possession and control of the same.

It is further ordered that before entering upon the duties of his said trust herein, the said Frederick D. Connor shall execute to the Clerk of this Court and file with the Clerk of this Court, a bond and sureties to the approval of this court in the sum of ten thousand dollars ($10,000), for the faithful discharge of his duties as such receiver and take the oath required by law of said officers.

February 11, 1903. ALBERT B. ANDERSON,
Judge.

I, Noble C. Butler, Clerk of the United States District Court, for the District of Indiana, hereby certify that the above and foregoing is a true and correct copy of an order made and entered by the United States District Court, for the District of Indiana, on the records of said court, at New Albany, Indiana, on the 11th day of February, 1903, of which records I am the proper custodian.

NOBLE C. BUTLER,
Clerk U. S. District Court.

[SEAL.] By George B. Cardwill,
Deputy Clerk.

UNITED STATES OF AMERICA, } *ss.*
District of Indiana. }

I, Noble C. Butler, Clerk of the District Court of the United States for the District of Indiana, do hereby certify that the above and foregoing is a full, true and complete copy of the petition of Frederick D. Connor, Receiver, etc., produced in evidence in said court in the cause of the United States vs. William W. Watts, D. A. Sachs, et al.

WITNESS my hand and the seal of said court, at Indianapolis in said District, this 12th day of March, A. D. 1903.

NOBLE C. BUTLER,
Clerk.

[SEAL.]

FILE COPY.

15 Orig.

Supreme Court of the United States.

In re WILLIAM W. WATTS, Petitioner.

Addenda to Exhibit B Filed with Petition.

[illegible] PRESS, LOUISVILLE, KY.

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Addenda to Exhibit B.

And said petitioner now files its indemnity bond herein in the words following, to-wit:

Know all Men by these Presents: That we, the Inland Steel Co. (a corporation organized under the laws of the State of Indiana) as principal, and The Fidelity and Deposit Company of Maryland and Louis Hartman, as sureties, are held and firmly bound unto M. Zier & Co., in the full and just sum of Twenty thousand dollars ($20,000) to be paid to said M. Zier & Co., or its assigns, to which payment well and truly to be made, we bind ourselves and our assigns jointly and severally by these presents.

Signed and sealed this 10th day of February, 1903.

The condition of this obligation is such that whereas, a petition in bankruptcy has been filed in the District Court of the United States for the District of Indiana against the said M. Zier & Co., and the said Inland Steel Co. has applied to that Court for the appointment of a receiver, with an order directing him to seize and hold the property of said M. Zier & Co. subject to the further orders of said District Court.

Now, therefore, if such Receiver shall be appointed and such order shall be made for the seizure of said property, and if the said Inland Steel Co. shall indemnify the said M. Zier & Company for such damages, as it shall sustain, in the event such seizure shall prove to have been wrongfully obtained,

then the above obligation is to be void—otherwise to remain in full force and virtue in law.

Signed and delivered in the presence of

[SEAL.] .....

.....

[SEAL.] FIDELITY & DEPOSIT CO. OF MD.
Witness: By Willis Mullen, *Gen. Agt. and*
L. C. WALKER. *Atty. in fact.*
[SEAL.] LOUIS HARTMAN.

IN THE U. S. DISTRICT COURT,

FOR THE DISTRICT OF INDIANA.

Inland Steel Company
vs.
M. Zier & Company. } In Bankruptcy.

I, George B. Cardwill, Deputy Clerk of U. S. District Court for the District of Indiana, at New Albany, Indiana, hereby certify that I have approved and I do now approve the Fidelity and Deposit Company of Maryland as surety on the bond of the petitioner in the above cause, which bond is for the sum of twenty thousand dollars ($20,000) and is attached hereto.

GEORGE B. CARDWILL,
Deputy Clerk U. S. District Court for the District of Indiana.

And afterwards, to-wit: on the 13th day of February, 1903, said Receiver filed his bond in the above-entitled matter, in the words following, to-wit:

Know all Men by these Presents: That we, Frederick D. Connor, as principal, and the Fidelity and Deposit Company of Maryland and Louis Hartman, as sureties, are held and firmly bound unto the United States of America in the penal sum of Ten Thousand Dollars ($10,000) for the payment of which we bind ourselves, our heirs, executors and administrators firmly by these presents.

Signed and dated this 12th day of February, A. D. 1903.

The condition of the above obligation is such, that whereas, on the 11th day of February, 1903, the said Frederick D. Connor was duly appointed by the United States District Court for the District of Indiana as Receiver in Bankruptcy, to take charge of the property and effects of M. Zier & Company, the alleged bankrupt therein, until the further order of the Court therein:

Now if said Frederick D. Connor shall faithfully perform his duties as such Receiver as required by law and account for to said Court and pay over all moneys and property which may come into his hands as such Receiver by virtue of said order, then the above obligation shall be void, otherwise to be in full force and effect in law.

FREDERICK D. CONNOR.

FIDELITY & DEPOSIT CO. OF MARYLAND,

[SEAL.] By Willis Mullen,

Gen'l Agt. & Atty. in Fact.

LOUIS HARTMAN.

Approved by me this 13th day of February, 1903.

ALBERT B. ANDERSON,

Judge of the U. S. District Court.

Approved by me this 12th day of February, 1903.

NOBLE C. BUTLER,

Clerk of the U. S. District Court at New Albany.

By George B. Cardwill, *Deputy.*

Approved by me this 11th day of February, 1903.

ALBERT B. ANDERSON,

District Judge.

Approved by me this day of February, 1903.

. . . . . .

U. S. Clerk.

And afterwards, to-wit: on the 16th day of February, 1903, Frederick D. Connor, receiver of said M. Zier & Company, filed his petition herein, in the words following, to-wit:

TO THE HONORABLE A. B. ANDERSON,

Judge of said Court:

Frederick D. Connor, heretofore appointed receiver of the property of said M. Zier & Company, respectfully shows to the Court: That the New Albany Trust Company, heretofore appointed and now acting as Receiver of said M. Zier & Company under appointment of the Floyd Circuit Court, of Floyd County, Indiana, has done such acts and so conducted itself as to give reasonable cause for the petitioner to believe that it will resist the order of the Court made herein, for the petitioner as Receiver of this Court to take charge and control of the property of said M. Zier & Company, and that it will disobey the order of the Court heretofore made herein, requiring it to deliver to the petitioner the property and effects of said M. Zier & Company.

The petitioner further represents that he has reason to believe that the Floyd Circuit Court of Floyd County, Indiana, and the Judge thereof will refuse to allow its

Receiver to obey the order of the Court made herein to take possession and control of the property and effects of said M. Zier & Company, and that be certain contempt proceedings will punish the petitioner in bankruptcy for taking any steps to have the said M. Zier & Company declared a bankrupt and for in any way interfering with the possession of said The New Albany Trust Company as Receiver of said property.

Petitioner further says that on the 14th day of February, 1903, said The New Albany Trust Company by W. W. Watts and J. R. Watts, their attorneys, and by Fred. Sauer, the Secretary, appeared in open court before the Hon. W. C. Utz, Judge of said Floyd Circuit Court, and filed its petition and report, a certified copy of which is filed herwith marked "Exhibit A" and made a part hereof; That thereupon after argument by said W. W. Watts the said Judge of said Court made and entered in said cause an order restraining and prohibiting the petitioners in bankruptcy herein from prosecuting the said cause in bankruptcy and from in any way molesting or interfering with the possesion of the said New Albany Trust Company as Receiver of said property of said M. Zier & Company, a copy of which order is filed herewith marked exhibit "B" and made a part hereof.

Wherefore your petitioner asks that he may be directed by an order of this Court what to do in the premises and what steps he shall take in order to obtain the possession of said property and for all necessary orders to govern his actions as such Receiver herein.

FREDERICK D. CONNOR,

Subscribed to and sworn to before me this 14th day of February, 1903.

WALTER G. HARRISON,
Notary Public.

[SEAL.]

Com. expires Oct. 22 1905.

And afterwards, to-wit: On the 9th day of March, 1903, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled matter were had to-wit:

The petition of Inland Steel Company, a corporation, John C. Thurston and John Dey, doing business as Dey Time Register Company, that M. Zier and Company be adjudged a bankrupt within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered the said M. Zier & Company is hereby declared and adjudged bankrupt accordingly.

And at the same time, to-wit: On the 9th day of March, 1903, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above-entitled matter were had to-wit:

Whereas M. Zier and Company, a corporation of New Albany, in the County of Floyd and District aforesaid, on the 9th day of March, A. D. 1903, was duly adjudged a bankrupt upon a petition filed in this Court against him on the 6th day of February, A. D. 1903, according to the provisions of the Acts of Congress relating to bankruptcy.

It is therefore ordered that said matter be referred to Lawrence B. Huckeby, one of the referees in banbruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that said M. Zier and Company shall attend before said referee on the 1st day of April, A. D. 1903, at New Albany, and thenceforth shall submit to such orders as may be made by said referee or by this Court relating to said involuntary bankruptcy.

Pleas of the District Court of the United States for the District of Indiana, begun and holden at the United States Court House in the city of Indianapolis in said District, on the first Tuesday in November in the year of our Lord one thousand nine hundered and two, before Honorable Albert B. Anderson, Judge of said District Court.

United States
vs.
William W. Watts
and D. A. Sachs.
} No. 6377, Contempt.

Be it remembered that heretofore, to-wit, at the November term of said court on the 25th day of February, 1903, before Honorable Albert B. Anderson, Judge of said court, the following proceedings in the above-entitled cause were had, to-wit:

Comes now Joseph B. Kealing, Esq., United States Attorney, and files an Information in the above entitled cause in the words following to-wit:

UNITED STATES OF AMERICA,
District of Indiana.
} *ss.*

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF INDIANA.

November Term A. D. 1902, at Indianapolis.

Now comes Joseph B. Kealing, Attorney of the United States in and for the District of Indiana, who prosecutes for the said United States in this behalf in his own proper person and in the name and on behalf of the said United States, alleges, informs and declares as follows, to-wit: that in a certain proceeding in bankruptcy in the said District of Indiana, to-wit, in the matter of M. Zier & Co., bankrupts, case No. 37 in the said court pending at New Albany, Indiana, certain orders and decrees had been made by the said Uuited States District Court, the Hon. Albert B. Anderson presiding Judge, whereby Frederick D. Connor was appointed receiver

to take charge of the property, goods, wares and merchandise of the said M. Zier & Co., bankrupts aforesaid, that he had qualified as such receiver and had lawfully taken possession of the said property aforesaid then and there situated at New Albany, under and by virtue of the said order made by the court aforesaid, all of which more fully appears in the affidavit herewith and upon which this information is based. That on the 20th day of February, A. D, 1903, that Raymond J. Morris, Claude Sittason, Thomas Smithwick, Charles D. Kelso, William W. Watts and D. A. Sachs, whose given name is unknown to the affiant who made said affidavit, and to the Attorney for the United States herein, did then and there wrongfully, unlawfully, knowingly and forcibly take from the said Frederick D. Connor, receiver as aforesaid, the property, goods and chattels of M. Zier & Co., and then and there withhold wrongfully, knowingly and unlawfully the possession and custody of said property from the said Frederick D. Connor, receiver as aforesaid, well knowing at the time that he was lawfully appointed receiver of the said United States District Court aforesaid, and then and there knowingly, wrongfully, unlawfully and wilfully disregard and disobey the orders and decrees of the said court, all of which more fully appears in the accompanying affidavit, which is made a part hereof, whereby they are each guilty of contempt of this court, contrary to the form of the statutes and against the peace and dignity of the United States.

JOSEPH B. KEALING,
United States Attorney.

UNITED STATES OF AMERICA,
District Court of Indiana.

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF INDIANA.

BEFORE THE HONORABLE ALBERT B. ANDERSON, *Judge:*

In the matter of M. Zier & Company, against whom an action in Bankruptcy has been filed.

Comes now Clarles D. Kelso, the Receiver of M. Zier & Company under the appointment of the Honorable William C. Utz, Judge of the Floyd Circuit Court of Indiana, and Charles D. Kelso, individually, and for answer to the respective rules against him in the said above and foregoing entitled cause of action to show cause why he should not redeliver the property of the said M. Zier & Company into the possession and custody of Frederick D. Connor as Receiver of the said District Court of Indiana, sitting in Bankruptcy, and also to show cause why he should not be punished for contempt for the violation of the orders of said Court heretofore made in said above-entitled cause of action, says:

That on the 30th day of December, 1902, Joseph T. Ryerson & Son, as plaintiffs, commenced an action in the Floyd Circuit Court of Indiana against M. Zier & Company on several certain notes, then and there due, and demanded judgment against the defendant in the sum of fifteen thousand dollars ($15,000); that in said complaint it was shown that the said M. Zier & Company was indebted in the sum of sixty-five thousand dollars ($65,000) and was unable to meet its obligations and that the creditors of the said M. Zier & Company threatening to enter suits against it;

that said defendant was then and there without means and money with which to continue the operation of its business, that by said complaint the said plaintiff prayed for the appointment of a Receiver, that on said 30th day of December, 1902, the said complaint was by the said plaintiff in said cause carried to the Hon. William C. Utz, Judge of said Floyd Circuit Court, and the Hon. William C. Utz, as such Judge of said Court, was then and there requested and moved by the said plaintiff to appoint a Receiver for the said defendant, M. Zier & Company; that the said M. Zier & Company agreed to said application for the appointment of a Receiver and consented that said Judge of said Court might appoint a receiver therefor; that upon said day and upon consideration the said Judge of said Court entered a Vacation Order in said cause granting the application of said plaintiff in said cause for the appointment of a Receiver, and thereupon appointed the New Albany Trust Company as Receiver of the said M. Zier & Company, a certified copy of which order, marked "Exhibit A," is filed herewith attached hereto and by this reference thereto made a part of this Respondent's answer herein.

That the said New Albany Trust Company immediately on said day duly qualified as said Receiver and then and there took upon itself the duty of said Receivership, a certified copy of which acceptance and qualification of said Receiver, marked "Exhibit B," is filed herewith, attached hereto and by this reference thereto made a part of this respondent's answer herein.

That the said Floyd Circuit Court of Indiana and the Judge thereof in vacation were by the statutes of the State of Indiana delegated full and plenty power to appoint Receivers; that said Floyd Circuit Court and the Judge thereof are respectively the Constitutional Court and the Consti-

tutional Officer and made so by the Constitution of the State of Indiana.

That immediately thereafter the said New Albany Trust Company gave notice of its appointment as such Receiver in a newspaper printed and published in the City of New Albany, Floyd County, Indiana; that said Receiver made out an Inventory of the property of said M. Zier & Company which it had taken possession of upon its appointment as such on the said 30th day of December, 1902, and caused the same to be appraised, which inventory and appraisement was filed in the said Floyd Circuit Court, and that said Inventory showed that the appraised value of said property was about twenty-eight thousand and five hundred dollars ($28,500).

That on the 16th day of January, 1903, the said Receiver filed in the Floyd Circuit Court its report and petition wherein it sought the advice and instruction of said Court with respect to the continuance of the operation of said plant and prayed the court that a time be fixed for the hearing of said report and petition, and further praying that the said M. Zier & Company and its officers and the creditors of the said M. Zier & Company be notified by mail and by application of the time and place of the hearing of this report and petition, and requesting said creditors to appear and make known their recommendations or objections to the continuance of the operation of the plant of M. Zier & Company; that said petition further prayed that all cred-creditors of M. Zier & Company be required to prove their claims against this estate by filing proof thereof with this Receiver or by intervening petition in this cause, and that all creditors and persons be restrained and enjoined from prosecuting suits involving this estate in any manner except by intervening petition in this action. And thereupon and

upon consideration of this petition, the said Floyd Circuit Court made a certain order, a certified copy of which, certified under the Act of Congress, marked "Exhibit C," is filed herewith and by this reference thereto made a part of this answer of the respondent herein.

That on the 24th day of January, 1903, the time fixed for the hearing of the above-mentioned reports and the several matters involved therein, it was made to appear to said Court by the said Receiver that all the creditors of the said M. Zier & Company, as shown by the books of the said M. Zier & Company, had been notified by said Receiver to be present on said 24th day of January, 1903, and heard on said matters, and the following-named creditors being present in person or by attorney, to-wit:

"(See Exhibit C.)"

a copy of which last-mentioned order is now filed with this response and made a part hereof by reference thereto and marked "Exhibit D," and that by said last-mentioned order all creditors and other persons were enjoined and restrained from prosecuting the claims or suits against this estate except by intervention in this cause or by first obtain-leave of the said Floyd Circuit Court.

That the said Receiver of the said M. Zier & Company by the authority of the Floyd Circuit Court continued the operation of said plant of M. Zier & Company until the 14th day of February 1903, when at that time it filed in Floyd Circuit Court its petition wherein it showed to the Court that the Inland Steel Company, John C. Thurston and the Dey Time Register Company, as creditors of said M. Zier & Company, had filed a petition in the United States District Court of the District of Indiana, sitting in Bankruptcy, praying for an order of Involuntary Bankruptcy and that said Floyd Circuit Court, then and there, on said 14th day

of February, 1903, authorized said Receiver to proceed to Indianapolis, Indiana, and there by limited appearance and by protestation against appearance only, by petition upon such appearance upon appearance only, lay before the said District Court of the United States for the District of Indiana the facts with regard to the matters herein, which order of said Court is filed herewith, marked "Exhibit E," and by reference thereto made a part of this respondent's answer herein.

That afterwards and on the same day, to-wit, the 14th day of February, 1903, in said cause of action, John T. Ryerson & Son versus M. Zier & Company, then and there depending in the Floyd Circuit Court of Indiana, Frederick D. Connor, as Receiver, by George H. Hester, his attorney, and by leave and order of the said Floyd Circuit Court and upon his own motion, made himself a party to the said proceeding in the matter of the receivership of said M. Zier & Company, then and there depending in said Floyd Circuit Court, and thereupon and said 14th day of February, 1903, filed in the said Floyd Circuit Court, by leave of said Court, his verified petition showing his appointment as Receiver of M. Zier & Company by order of the United States District Court for the District of Indiana and praying the said Floyd Circuit Court for an order requiring the said New Albany Trust Company as Receiver of said M. Zier & Company, to turn over and surrender to him, the said Frederick D. Connor as Receiver in Bankruptcy, the property of said M. Zier & Company, to which the New Albany Trust Company, Receiver of said M. Zier & Company, under the orders of the Floyd Circuit Court had custody; and that the matter of said petition was continued in the said Floyd Circuit Court until the next term thereof, a certified copy of which proceedings by the said Frederick D. Connor in said Floyd Circuit Court

and the order showing his intervention in said cause, is filed herewith, marked "Exhibit F," and by this reference thereto is made a part of this respondent's answer herein.

That afterwards, to-wit, on the 19th day of February, 1903, before the Honorable William C. Utz, sole judge of said Court in vacation, W. W. Watts, as attorney for the New Albany Trust Company as Receiver for M. Zier & Company, appeared and filed before said Judge of said Court a written statement, which the Judge of said Court, after considering the same, refused to concur therein and found that the matters and facts therein stated showed that said W. W. Watts had been guilty of contempt of court and the said Judge ordered that a rule be issued against the said W. W. Watts to appear before him on the 21st day of February at 3 o'clock P. M. and show cause, if any he has, why he should not be punished for contempt; that said respondent now files with his answer herein a certified copy of the said statement of said Attorney W. W. Watts, filed and set out, together with a certified copy of the action of the said Judge thereon, which certified copy is attached hereto and marked "Exhibit G," and by this reference thereto is made a part of this respondent's answer herein.

That on the said 19th day of February, before the Hon. William C. Utz, Judge of said Floyd Circuit Court, in vacation, the New Albany Trust Company as Receiver for said M. Zier & Company tendered to the Judge of said Floyd Circuit Court its written resignation as said Receiver, and the Judge, after reading said tender of resignation, held that the matters therein set forth showed that said Receiver was in contempt of Court and then and there ordered that a rule issue at once against said Receiver to appear before the said Judge of said Court on the 21st day of February at 3 o'clock P. M. and show cause, if any he had or can, why

it should not be punished for contempt of Court, a certified copy of which written tender of resignation, together with the action of the Judge of said Court, thereon is attached hereto and marked "Exhibit H," and by this reference thereto is made a part of this respondent's answer herein.

That afterwards, to-wit, on the 20th day of February, 1903, the United States Tube Company, D. A. Sachs, its attorney, filed before the judge of said Court, its verified statement, wherein it prayed said Judge to remove said New Albany Trust Company from its trust as Receiver of M. Zier & Company; that said New Albany Trust Company appeared to said petition and avowed before the said Judge of said Court that it had surrendered the possession of the said property of said M. Zier & Company to Frederick D. Connor without the leave of said Court; that thereupon said Judge of said Court refused to accept the resignation of the said New Albany Trust Company as said Receiver, and then and there entered an order removing said Trust Company as said Receiver and in its place and stead appointed the respondent, Charles D. Kelso, as its successor, in the matter of the receivership of said M. Zier & Company; that this respondent immediately qualified as said Receiver and gave bond in the sum of thirty thousand dollars ($30,000) to the approval of the Judge of said Floyd Circuit Court; that this respondent was then and there ordered by the Judge of the said Floyd Circuit Court to demand of the said New Albany Trust Company and of the said Frederick D. Connor the immediate possession of the property of the said M. Zier & Company,which came into the hands of the said New Albany Trust Company as a Receiver herein, and that if the said New Albany Trust Company or the said Frederiek D. Connor shall fail and refuse to immediately turn over and surrender the possession of said assets to said Receiver, the

Judge of said Court ordered this Receiver to immediately report such refusal and failure to surrender said assets to said Judge for further action in the premises, all of which more fully appears from the certified copy of said petition of the United States Tube Company and the action of said Judge thereon, which is attached hereto and marked "Exhibit I," and by this reference thereto made a part of this respondent's answer herein.

That afterwards on the said 20th day of February, 1903, in obedience to the order of said Court, this respondent as Receiver of M. Zier & Company called upon the New Albany Trust Company and demanded that possession of all the assets of M. Zier & Company which came into its hands as Receiver thereof be surrendered to him, and that said Trust Company failed and refused to surrender the possession of the same for the reason that it claimed that it had turned over the Plant of the M. Zier & Company to said Frederick D. Connor; that for the other assets of said M. Zier & Company it intended to account forthwith to the said Judge of the said Floyd Circuit Court; that thereupon this Respondent as Receiver of M. Zier & Company, in further obedience to the order of said Judge, called upon the said Frederick D. Connor at his home in the City of New Albany, Indiana, and demanded of him the possession of all the property of said M. Zier & Company which had been turned over to him by the said New Albany Trust Company; that said Frederick D. Connor failed and refused to turn the same over to this Respondent. This Respondent says that he reported said facts last above recited to the Floyd Circuit Court on the said 20th day of February, 1903, and upon making said report the said Judge of said Court, upon consideration of said report, found that said Frederick D. Connor had been intermeddling with the assets of said estate, and it was there-

upon considered ordered and adjudged by the said Judge of said Court that a summary writ be issued, directed to the Sheriff of Floyd County, Indiana, requiring the said Sheriff to immediately seize and take into his possession and deliver over to the said Charles D. Kelso, Receiver of M. Zier & Company, all the property of the said M. Zier & Company which Fredrick D. Connor now has in his possession, which consists of the plant of M. Zier & Company, located at the corner of Pearl and Oak Streets, in the City of New Albany, including all tools, machinery, manufactured iron, scrap iron, appliances and other personal property therein situated, books, papers, accounts and choses in action, and that said Sheriff was by said order required to execute said writ forthwith, and upon the execution of said writ to make his return to the Judge of said Floyd Circuit Court, all of which last-mentioned proceedings appear more fully from the certified copy thereof, attached hereto and marked "Exhibit J," filed herewith and by this reference thereto made a part of this respondent's answer herein.

That this Receiver is informed and so states the fact to be that a writ was issued by the said Floyd Court of Indiana in compliance with the aforesaid order of the Judge of said Court and delivery to the Sheriff of Floyd County, Indiana, for execution: That said writ was delivered to said Sheriff on the 20th day of February, 1903, and was on the same day executed by him by seizing and taking from Frederick D. Connor the property described in said writ: that after the said Sheriff had taken said property from the said Frederick D. Connor, the said Sheriff, in obedience to the commands of said writ, delivered the same to this respondent, as receiver, under the appointment of said Judge as aforesaid, and not otherwise.

This respondent says that he did not take said property from said Connor, whether as receiver or otherwise, by force

or otherwise, but that his sole connection with said property was, as aforesaid, in receiving the same from the Sheriff of Floyd County, Indiana, under and in pursuance and in obedience to the orders of said Judge of said Floyd Circuit Court, and that his holding of said property is solely as receiver under said appointment and pursuant to and in obedience to the orders of the Judge as aforesaid and in no other capacity or manner whatever.

Respondent shows that at and prior to the time of his appointment as receiver, and at and prior to the doing of facts herein averred, this respondent was an officer of the Floyd Circuit Court, to-wit: an attorney at law, admitted to practice therein, and, as such subject to the orders of said court in all lawful matters that might be ordered by said court; that while he has been engaged in the practice of his profession in this honorable court, and, as such, an officer thereof, he has had scant experience in the bankruptcy practice, and prior to his appointment as receiver had no occasion to inform himself of the price lines of demarkation between the jurisdiction of the courts of the state of this court.

Respondent further says that in the city of New Albany and in the city of Louisville, and in the vicinity thereof, one D. A. Sachs, a member of the bar of the Louisville Courts and of the United States District,Circuit and Supreme Courts, has enjoyed for a long time the reputation of a competent, skilled and reputable lawyer, and especially familiar with the proceedings in bankruptcy matters, which reputation was known to this respondent, and as this respondent is informed and believes, was known to the Hon. William C. Utz, Judge as aforesaid, and that by the direction of said Judge this respondent, upon his appointment and qualification as receiver, employed said Sachs as his counsel in said

matters, and was in all respects guided by his opinion and advice, save in so far as he had explicit orders and directions from the Judge.

Respondent further says that all of his acts and doings in the premises were done not individually but as a receiver of said M. Zier & Co., as an officer of the Floyd Circuit Court, under the direction and in obedience to the orders of the Judge of said Court as aforesaid, and that as an individual and separate and distinct from his position as receiver, he has had and has now no connection whatever with said plant and has done nothing in the premises.

This respondent further says that long prior to the appointment of this respondent as receiver and the acts subsequent thereto, the Floyd Circuit Court, by its receiver, was in the actual, peacable and undisputed control and possession of the above and foregoing property and that the jurisdiction of the Floyd Circuit Court had attached over the person of said M. Zier and the subject-matter of said action by the voluntary appearance of said M. Zier & Co. to the complaint filed as herein shown by Joseph T. Ryerson & Son long prior to the time when the proceedings in involuntary bankruptcy above referred to were commenced in this honorable Court, and long prior to the passage of the amendment to the bankruptcy law approved on the 5th day of February, 1903.

He respectfully submits that at the time of the criminal appointment of a receiver for said M. Zier & Co. by the Judge of the Floyd Circuit Court, said Judge could not without a violation of his oath of office and his duties as such Judge, have refused to appoint such receiver, and through said receiver to take possession of said property, and that by reason thereof the said possession so taken of said property and plant of said M. Zier & Co. by said Court, through its

receiver, was not wrongful or illegal, but was legal and rightful, and that if it ever thereafter became wrongful or illegal, it became so solely by reason of the fact, as your respondent is informed by cousel in whose judgment and opinion he relies, because of the amendment to said Bankruptcy Act enacted and approved on the 5th day of February, 1903, and that by reason of the fact that said amendment to said Act was not and is not retrospective by said of said property, through its receiver, continued to be rightful and in accordance with the statutes of the United States in such a case made and provided.

This respondent further shows that upon the delivery to him by the Sheriff of the possession of said property, he employed one Thomas Smithwick as custodian thereof and placed him in charge of said property as such custodian, to the end that it might be cared for and preserved, and he submits to the court that the appointment by him of said Smithwick as custodian was not wrongful nor illegal unless the orders of said Judge of the Floyd Circuit Court, as aforesaid, were without jurisdiction and consequently void. And he asks that his return to said rule be taken and held by the court as the return not only for himself as receiver and as an individual, but for and on behalf of said Smithwick.

This respondent further submits to the court that if the possession of said property by said Floyd Circuit Court through its receiver, was valid and binding and if said Circuit Court had jurisdiction over the person of said defendants and of the subject-matter of said action, and consequently of said property, as this respondent is advised and believed by counsel that it had, its receiver so originally appointed, to-wit: the New Albany Trust Co., had no right, warrant or authority whatever, without the approval of

said Floyd Circuit Court, or the Judge thereof in vacation, to abandon or surrender the possession of said property or any portion thereof, to any other person without the consent, approval and order of the Floyd Circuit Court or the Judge thereof, in vacation, and this respondent avers that the surrender to said Connor, whether as receiver of this Honorable Court or otherwise, by said New Albany Trust Company, was not authorized by said Floyd Circuit Court and was without authority of law, unless said Floyd Circuit Court had originally no jurisdiction of the subject-matter of said action or had lost jurisdiction thereof by reason of the amendment to the Bankruptcy Act approved February 5th, 1903, or by reason of the pendency of the proceedings in bankruptcy herein.

This respondent further says that he has never at any time intended to violate any of the orders of this court, or in any wise interfere with its jurisdiction or the possession of said property by this Court, through its receiver or otherwise, but has only intended and endeavored to obey the orders of the Floyd Circuit Court and of the Judge thereof in the premises in matters in which he was at the time advised by his counsel he was compellable to obey such orders.

If upon the foregoing facts it shall appear to this court that he has in anywise or manner interfered with its jurisdiction, he submits that he does so upon the advice of counsel selected for him by the Judge by whom he was appointed, and upon whose advice and opinion he relied, and not with any intention or purpose whatever of interfering with the lawful orders of this court or its process, or of showing any disrespect to this court, the Judge thereof, its jurisdiction or orders, and if upon the foregoing facts this court shall be of the opinion that the Circuit Court, either originally had no jurisdiction of the subject-matter of said action or there-

after lost jurisdiction thereof by reason either of the amendment to said Bankruptcy Act of the 5th of February, 1903, or by reason of any of the orders that have been made by this court, and that because thereof this respondent ought to be directed as such receiver or otherwise, to surrender the possession of said property to said Connor as receiver of this court, or to this court, he respectfully submits that an order in that behalf ought to be made by this court, to the end that he might file and plead the same in said Floyd Circuit Court and to the Judge thereof as a justification for his conduct and doings in the premises, to the end that he may not be or appear to be in contempt or the orders of said Floyd Circuit Court or the judge thereof, and to the end that there should be no apparent controversy between this Honorable Court and said Floyd Circuit Court over said property or any matters whatever connected therewith, and that upon the entering of such order he may be discharged hence, or that the Court may make such other and further orders in the premises as may to the court appear just and proper and equitable in the premises.

WILLIAM A. KETCHAM,
Solr. for Respondents.

Thomas Smithwick respectfully shows to the Court that so far as he has any knowledge, information or belief upon the subject, his connection with the matters herein are set forth in the above and foregoing return, and he asks that the same be accepted as his return, to the proceedings herein. THOS. SMITHWICK.

Personally appeared before me, a Notary Public, the above-named Thomas Smithwick, and acknowledged the foregoing facts to be true as he verily believes.

ARTHUR F. SHAFER,
[SEAL.] *Notary Public.*

My commission expires Dec. 20, 1904.

Charles D. Kelso respectfully shows to the Court that so far as he has any knowledge, information or belief upon the subject, his connection with the matters herein are as set in the above and foregoing return, and he asks that the same may be accepted as his return to the proceedings herein.

CHARLES D. KELSO.

Personally appeared before me, a Notary Public, the above-named Charles D. Kelso and acknowledged the foregoing facts to be true as he verily believes.

ARTHUR F. SHAFER,
Notary Public.

[SEAL.]

My commission expires Dec. 20, 1904.

UNITED STATES OF AMERICA, } ss.
District of Indiana. }

IN THE DISTRICT COURT OF THE UNITED STATES.

FOR THE DISTRICT OF INDIANA.

BEFORE THE HONORABLE ALBERT B. ANDERSON, *Judge:*

In the matter of M. Zier & Company, against whom a petition for adjudication in Bankruptcy has been filed. } In Bankruptcy.

Come now Claude Sittason, deputy sheriff of Floyd County, Indiana, and Claude Sittason, individually, and for answer and response to the rule issued herein do show cause why he should not redeliver the property of M. Zier

& Company to Frederick D. Connor, receiver of this Court, and also for answer and response to the rule to show cause why he should not be attached in contempt of this Honorable Court, most respectfully says:

That on the first day of January, 1903, he was duly appointed by Raymond J. Morris, the then acting and legally qualified sheriff of Floyd County, as his deputy sheriff; that he immediately qualified as such deputy sheriff and since then he has been acting as such deputy sheriff. He further says that on the 20th day of February, 1903, there was issued out of the Floyd Circuit Court, under the hand of the Clerk and seal of said Court, directed to the sheriff of Floyd County, Indiana, a writ in the words and figures following, to-wit:

STATE OF INDIANA.

To the Sheriff of Floyd County:

Greeting.

By order of the Honorable William C. Utz, Judge of the Floyd Circuit Court, which order was made in vacation, you are hereby commanded and required to forthwith take from Frederick D. Connor the possession of the boiler plant of M. Zier & Co., situated on the northeast corner of Pearl and Oak Streets in the City of New Albany, Indiana, together with all the tools, machinery, appliances, books, papers, accounts, choses in action, and all other personal property belonging to said M. Zier & Company and found in the premises of said M. Zier & Company at said point in the city of New Albany, Indiana, being the same property wrongfully and without leave of this Court surrendered to Frederick D. Connor by the New Albany Trust Company, formerly receiver of M. Zier & Company, and you are further required

by the order of said Judge of said Court to forthwith deliver said above-described property to Charles D. Kelso receiver of said M. Zier & Company, and of this writ make due service and immediate return thereof.

Witness, Charles B. Scott, Clerk of the Floyd Circuit Court, and the seal hereto affixed at the Court House in the City of New Albany, this 20th day of February, 1903.

CHARLES B. SCOTT,
Clerk of the Floyd Circuit Court.
By William F. Ruoff,
Deputy.

[SEAL.]

That said writ immediately came to the hands of Raymond J. Morris, sheriff of Floyd County, Indiana; and that when said writ so came to the hands of said Raymond J. Morris, as such sheriff of Floyd County, said Morris, as such sheriff, notified this respondent as his deputy to go with him as a witness while he executed said writ. That he thereupon accompanied said Raymond J. Morris, as such sheriff of Floyd County, to the residence of Frederick D. Connor while said Morris as such sheriff served said writ by reading the same and by delivering a certified copy thereof to said Frederick D. Connor. That thereupon said Raymond J. Morris went to the plant of M. Zier & Company at Pearl and Oak Streets in the City of New Albany and County of Floyd; and upon the order and request of said Sheriff this respondent went with him. That said property at the time was in the possession of and control of one Charles Davis, and said sheriff thereupon told said Davis of his official authority who thereupon turned said property over to said Morris. That under the order and direction of said Morris, this respondent, as his deputy, remained in possession of said property for about ten minutes while said Morris as such sheriff went to

the Judge's room of the Floyd Circuit Court and reported the fact that he had so taken possession of said property; that at the end of about ten minutes said Morris returned and delivered the possession of said property into the hands of Charles D. Kelso, who claimed to have been appointed receiver of said property by the Floyd Circuit Court, and to whom said Morris by said writ and by the Judge of said Court was ordered and directed to deliver said property.

This respondent further says that he had nothing to do with the procuring of said order or with the issuing of said writ. That this respondent was subject to the orders of said Raymond J. Morris as sheriff of Floyd County, Indiana, and that he ignorantly and innocently believed that it was his right and duty to assist said Morris in the execution of said writ in the manner set out as aforesaid. That he acted in the utmost good faith, believing that it was his sworn duty as such deputy sheriff to do what he did do under said writ; that he believed that if he failed to do it, he would be subject to fine and punishment by the Floyd Circuit Court and to removal from his office. That this respondent believed that said order was valid on its face, and that all of his acts and doings thereunder were ignorantly and innocently done and performed without any intention of committing a contempt against the dignity, authority, judgments and processes of this Honorable Court, and wholly in the belief that it was the duty of the respondent to do and perform said acts.

Said respondent further says that he does not attempt to justify the acts of the Floyd Circuit Court in the premises; that he was not a party to the same; and that he had nothing to with the procuring of said proceedings or the issuing of said writ; that he neither advised nor counseled the same; that he regrets exceedingly the complications that

have arisen in this matter, and he regrets exceedingly the acts that he has done under said writ. He says that he stands ready and willing to do all that is within his power to remedy and rectify the acts and proceedings done by him under said writ.

Said respondent further says that for himself as an individual he has done and performed none of the acts complained of and that the same were all done and performed by him as the deputy sheriff of Floyd County, Indiana, under and by virtue of said writ and order so issued out of the Floyd Circuit Court, and under and by virtue of the orders of his superior, Raymond J. Morris, sheriff of Floyd County, Indiana.

Wherefore, said Claude Sittason, as sheriff of Floyd County, Indiana, and said Claude Sittason, as an individual, asks to be dismissed from the rules issued therein.

EVAN B. STOTSENBURG,
JOHN H. WEATHERS,
Attorneys for respondent.

UNITED STATES OF AMERICA,

STATE OF INDIANA.

Claude Sittason being duly sworn, upon his oath says that he is the respondent in the above-entitled matter and that the facts set out in said response are true as he is informed and verily believes.

CLAUDE A. SITTASON.

Subscribed and sworn to before me this 25th day of February, 1903.

NOBLE C. BUTLER,
Clerk.

UNITED STATES OF AMERICA,

UNITED STATES OF AMERICA, }
} *ss.*
District of Indiana. }

IN THE DISTRICT COURT OF THE UNITED STATES,

For the District of Indiana.

BEFORE THE HONORABLE ALBERT B. ANDERSON, *Judge.*

In the matter of M. Zier & Company, against whom a petition for adjudication in Bankruptcy has been filed. } In Bankruptcy.

Come now Raymond J. Morris, Sheriff of Floyd County, Indiana, and Raymond J. Morris, individually, and for answer and response to the rule issued herein to show cause why he should not redeliver the property of M. Zier & Company to Frederick D. Connor, Receiver of this court, and also for answer to the rule to show cause why he should not be attached for contempt of this honorable Court, most respectfully says:

That he was elected sheriff of Floyd County, Indiana, at the general election held in November, 1902, and that he took his office on the first day of January ,1903; and since that time he has been the duly elected, qualified and acting sheriff of said county of Floyd and State of Indiana. He further says that by the provisions of Sections of 5868 of the Revised Statutes of 1881 of said State of Indiana, the duties of this respondent as sheriff are defined and fixed as follows, to-wit:

"§5868. Duties.—Such Sheriff shall be a conservator of the pease within his county; shall arrest, without process, all persons who, within his view, shall commit any crime or misdemeanor, take them before the nearest Justice of the Peace of the county, and detain them in custody until the cause of such arrest has been investigated; suppress all breaches of the peace within his knowledge, having hereby given him authority to call to his aid the power of the county; pursue and commit to the jail of the county all felons; execute all process directed to him by legal authority, either in person or by deputy; attend upon and preserve order in all Courts of record in his county, except Justice's Courts; take care of the jail and the prisoners therein; and serve all process directed to him from the Circuit Court or from the Board of Commissioners, according to law."

That according to the provisions of said statute this respondent innocently and ignorantly believed that it was his duty to serve any and all order issued out of the Floyd Circuit Court, of which Court he was and is the sheriff, without regard to the legality of said writs or of the apparent fairness thereof. That on the 20th day of February, 1903, this respondent was absent on official duty in the County of Harrison and State of Indiana, until about six o'clock P. M. of said day; that upon his arrival home and at his office, he was informed by his deputy to be before the Judge of the Floyd Circuit Court sitting in chambers at seven o'clock P. M. of said day; that he reported to said Judge as required by said notice, and thereupon the Clerk of the Floyd Circuit Court delivered to him, under his hand and seal of office, the following writ from the Hon. William C. Utz, who was the sole and presiding Judge of the Floyd Circuit Court, to-wit:

"STATE OF INDIANA.

TO THE SHERIFF OF FLOYD COUNTY:

Greeting.

By order of the Honorable William C. Utz, Judge of the Floyd Circuit Court, which order was made in vacation, you are hereby commanded and required to forthwith take from Frederick D. Connor the possession of the boiler plant of M. Zier & Co., situated on the northeast corner of Pearl and Oak Streets, in the City of New Albany, Indiana, together with all the tools, machinery, appliances, books, papers, accounts, choses in action and all other personal property belonging to said M. Zier & Company and found in the premises of said M. Zier & Co. at said point in the city of New Albany, Indiana, being the same property wrongfully and without leave of this court surrendered to said Frederick D. Connor by the New Albany Trust Company, formerly receiver of M. Zier & Co., and you are further required by the order of said Judge of said Court to forthwith deliver said above-described property to Charles D. Kelso, receiver of said M. Zier & Co., and of this writ make due service and immediate return thereof.

Witness, Charles B. Scott, Clerk of the Floyd Circuit Court, and the seal hereto affixed at the Court House in the City of New Albany, this 20th day of February, 1903.

CHARLES B. SCOTT,

[SEAL.] *Clerk of Floyd Circuit Court.*

By William Ruoff,

Deputy."

That said writ required this respondent, as sheriff of Floyd County, Indiana, to take possession of the boiler plant of M. Zier & Co., together with all the tools, machinery,

appliances, books, papers, accounts, choses in action, and all other personal property belonging to said M. Zier & Company, and deliver the same to Charles D. Kelso, appointed receiver by said Floyd Circuit Court.

This respondent further says that he had nothing to do with the procuring of said order or with the issuing of said writ. That since he has been the sheriff of Floyd County he has been consulting Evan B. Stotsenburg, a regular practicing attorney of the Floyd Circuit Court, as his legal adviser in matters affecting his official conduct; that as soon as he received said writ he telephoned to said Evan B. Stotsenburg to ask his opinion as to what his duties were under said writ; that he ascertained that said Evan B. Stotsenburg was confined to his bed by sickness, and that he was unable to, and did not, and could not procure his advice. That thereupon this respondent, ignorantly and innocently believing that it was his right and duty to execute said writ according to its terms, and acting in good faith and with pure motives, and with no intention of insulting this Court or defying its orders, judgments, and processes, executed said writ by reading the same to and within the presence and hearing of said Frederick D. Connor at his home in the City of New Albany, Indiana, and also by delivering to him a certified copy of said writ. That upon said Connor refusing to deliver possession of said property described in said writ, this respondent thereupon went upon said property and demanded the same from the possession of one Charles Davis, who was in possession thereof, and from whom this respondent learned that he was in possession of the same as agent and representative of said Connor. That upon this respondent notifying said Charles Davis of the fact that he was sheriff of Floyd County, Indiana, and of the fact that he had said writ, said Charles Davis, upon

the demand of this respondent, delivered said property over to this defendant, who thereupon put his deputy, Claude Şittason, in temporary possession thereof. That after this respondent had so put his deputy in possession of said property, he verbally reported to said Honorable William C. Utz, Judge of the Floyd Circuit Court, what he had done: and asked for further instructions in the matter. Thereupon he was informed by the Honorable William C. Utz, as such Judge, that it was his duty to fully execute said writ by turning said property over to Charles D. Kelso, who had been appointed receiver thereof by said Honorable William C. Utz, as such Judge. That thereupon in obedience to said writ and command of said Judge, and ignorantly and innocently believing that it was his duty to do so, he turned over said property to said Charles D. Kelso, as such receiver, who has ever since had possession of said property. That thereupon this respondent, as such sheriff, made the following return to said writ:

"This writ came to hand at eight o'clock P. M. on the 20th day of February, 1903, and I have served the same by reading the within to and in the presence and hearing of Frederick D. Connor, and delivering to him a certified copy of the same; and the said Connor refused to deliver the possession of the property described in the within writ, whereupon I seized and took possession of the within described property and have turned the same over to Charles D. Kelso, receiver of M. Zier & Company.

"Dated this 20th day of February, 1903. Served in Floyd County, Indiana.

RAYMOND J. MORRIS,
Sheriff of Floyd County, Indiana."

That without justifying or attempting to justify the action of the Floyd Circuit Court in the premises, he is informed and believes that said Floyd Circuit Court purported to so act in the premises by the provisions of Section 1226 of the Revised Statutes of Indiana of 1881, which provides:

"§1226. Failure to deposit--Order to Sheriff. Whenever, in the exercise of its authority, a Court, or the Judge thereof in vacation, shall have ordered the deposit or delivery of money or other thing, and the order is disobeyed, the Court or the Judge, besides punishing the disobedience as for contempt, may make an order requiring the Sheriff to take the money or thing, and deposit it or deliver it in conformity with the direction of the Court or Judge thereof."

But be that as it may this respondent says that in all things done by him in the premises he acted in the utmost good faith, believing that it was his sworn duty as such sheriff to execute said writ so issued out of said Court according to its terms, and that if he failed to do so, he would be subject to fine and punishment by the Court, to removal from his said office, to punishment under the criminal laws of the State of Indiana, and to impeachment. That this respondent believed that said order was valid upon its face, and that all his acts and doings thereunder were ignorantly and innocently done and performed without any intention of committing a contempt against the dignity, authority, judgments and processes of this Honorable Court, and wholly in the belief that it was the duty of this respondent to do and perform said acts. This respondent further says that he does not attempt to justify the acts of the Floyd Circuit Court in the premises, that he was not a party to the same, that he had nothing to do with the procuring of said proceedings, or the issuing of said writ, that he neither

advised nor counseled the same, that he regrets exceedingly the unfortunate complications that have arisen in this manner, and he regrets exceedingly the acts that he has done under said writ. He says that he stands ready and willing to do all that is within his power to remedy and rectify the proceedings and acts done and performed by him under said writ. This respondent further says that since he performed and did the acts above set out under said writ, he has been informed by his counsel that when he ascertained that said property was in the hands of the receiver of this Court, he should have appeared in this Court and presented his writ and the authority under which he was purporting to act, for the consideration of the Court.

This respondent further says for himself as an individual he has done and performed none of the acts complained of, but that the same were all done and performed by him as sheriff of Floyd County, under and by virtue of said writ and order so issued out of the Floyd Circuit Court.

Wherefore, said Raymond J. Morris, as sheriff of Floyd County, Indiana, and said Raymond J. Morris as an individual, ask to be dismissed from the rules issued against him herein.

EVAN B. STOTSENBURG,
JOHN H. WEATHERS,
Attorneys for respondent.

UNITED STATES OF AMERICA, } *ss.*
State of Indiana. }

Raymond J. Morris, being duly sworn upon his oath, says that he is respondent in the above-entitled matter, and that the facts set out in said response are true as he is informed and verily believes; and further says not.

RAYMOND J. MORRIS.

Subscribed and sworn to before me this 25th day of February, 1903.

NOBLE C. BUTLER,
Clerk.

And thereupon replications are filed to the foregoing answers, in the words following, to-wit:

Comes now the petitioner, Frederick D. Connor, Receiver, and files for reply to the answer and showing made by Charles D. Kelso, and in behalf of Thomas Smithwick to the charge of wrongfully keeping the possession of the property of said bankrupts from the possession and control of the receiver, denies each and every material allegation therein contained.

GEO. H. HESTER,
Atty. for Petitioner.

Comes now the petitioner Frederick D. Connor, Receiver, and for reply to the answer and showing made by Raymond J. Morris, the sheriff of Floyd County, Indiana, to the charge against him of wrongfully taking the property of said bankrupt from his possession and control and for contempt of this court, denies each and every material allegation therein contained.

GEO. HESTER,
Atty. for Petitioner.

Comes now the petitioner Frederick D. Connor, Receiver, and for reply to the answer and showing of Claude Sittason, deputy sheriff, in the charge of contempt of this court in taking wrongful possession of the property of said bankrupt, denies each and every material allegation contained in his said answer.

GEO. H. HESTER,
Atty. for Petitioner.

And this cause coming on to be tried, and the court having heard a part of the evidence herein, doth now adjourn until 9 o'clock to-morrow morning.

And afterwards, to-wit, at the November Term of said Court, on the 26th day of February, 1903, before Honorable Albert B. Anderson, Judge of said court, the following further proceedings in the above-entitled cause were had, to-wit.

Comes now Joseph B. Kealing, United States Attorney, and the defendants in person and by their attorneys also come, and the court having further heard the evidence herein doth now adjourn until 9 o'clock to-morrow morning.

And afterwards, to-wit, at the November Term of said Court, on the 27th day of February, 1903, before Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above-entitled cause were had, to-wit:

Comes now Joseph B. Kealing, United States Attorney, and at the same time also comes said defendant Charles D. Kelso in person, and by counsel, and this cause coming on to be further heard, is now submitted to the court upon the evidence; and the court being sufficiently advised doth find that said defendant is guilty of the contempt charged.

It is therefore considered by the Court that said defendant, Charles D. Kelso, for the offense charged be imprisoned and confined in the jail of Marion County, Indiana, for the term of sixty days, and that he do pay unto the United State, the cost of this proceeding, taxed at $...., and that he do stand committed until said costs are paid.

Comes now Joseph B. Kealing, United States Attorney, and at the same time also comes Raymond J. Morris, in person and by counsel, and this cause coming on to be further heard, is now submitted to the court upon the evidence; and the court being sufficiently advised doth find that said defendant is guilty of the contempt charged.

It is therefore considered by the court that said defendant, Raymond J. Morris, for the offense charged be imprisoned

and confined in the jail of Marion County, Indiana, for the term of twenty days, and that he do pay unto the United States the cost of this proceeding, taxed at $. . . ., and that he do stand committed until said costs are paid.

Comes now Joseph B. Kealing, United States Attorney, and at the same time also comes Claude Sittason in person and by counsel, and this cause coming on to be further heard, is now submitted to the court upon the evidence; and the court being sufficiently advised doth find that said defendant is guilty of the contempt charged.

It is therefore considered by the court that said defendant, Claude Sittason, for the offense charged be imprisoned and confined in the jail of Marion County, Indiana, for the term of ten days, and that he do pay unto the United States the cost of this proceeding, taxed at $. . . ., and that he do stand committed until said costs are paid.

Comes now Joseph B. Kealing, United States Attorney, and at the same time also comes Thomas Smithwick in person and by counsel, and this cause coming on to be furthur heard, is now submitted to the court upon the evidence; and the court being sufficiently advised doth find that said defendant is guilty of the contempt charged.

It is therefore considered by the court that said defendant, Thomas Smithwick, for the offense charged be imprisoned and confined in the jail of Marion County, Indiana, for the term of ten days, and that he do pay unto the United States the cost of this proceeding, taxed at $. . . ., and that he do stand committed until said costs are paid.

FILE COPY.

No. Orig.

Supreme Court of the United States.

In re DAVID A. SACHS, Petitioner.

Addenda to Exhibit B Filed with Petition.

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Addenda to Exhibit B.

And said petitioner now files its indemnity bond herein in the words following, to-wit:

Know all Men by these Presents: That we, the Inland Steel Co. (a corporation organized under the laws of the State of Indiana) as principal, and The Fidelity and Deposit Company of Maryland and Louis Hartman, as sureties, are held and firmly bound unto M. Zier & Co., in the full and just sum of Twenty thousand dollars ($20,000) to be paid to said M. Zier & Co., or its assigns, to which payment well and truly to be made, we bind ourselves and our assigns jointly and severally by these presents.

Signed and sealed this 10th day of February, 1903.

The condition of this obligation is such that whereas, a petition in bankruptcy has been filed in the District Court of the United States for the District of Indiana against the said M. Zier & Co., and the said Inland Steel Co. has applied to that Court for the appointment of a receiver, with an order directing him to seize and hold the property of said M. Zier & Co. subject to the further orders of said District Court.

Now, therefore, if such Receiver shall be appointed and such order shall be made for the seizure of said property, and if the said Inland Steel Co. shall indemnify the said M. Zier & Company for such damages, as it shall sustain, in the event such seizure shall prove to have been wrongfully obtained,

then the above obligation is to be void—otherwise to remain in full force and virtue in law.

Signed and delivered in the presence of

[SEAL.] .....

.....

[SEAL.] FIDELITY & DEPOSIT CO. OF MD.
Witness: By Willis Mullen, *Gen. Agt. and*
L. C. WALKER. *Atty. in fact.*
[SEAL.] LOUIS HARTMAN.

IN THE U. S. DISTRICT COURT,

FOR THE DISTRICT OF INDIANA.

Inland Steel Company
vs.
M. Zier & Company. } In Bankruptcy.

I, George B. Cardwill, Deputy Clerk of U. S. District Court for the District of Indiana, at New Albany, Indiana, hereby certify that I have approved and I do now approve the Fidelity and Deposit Company of Maryland as surety on the bond of the petitioner in the above cause, which bond is for the sum of twenty thousand dollars ($20,000) and is attached hereto.

GEORGE B. CARDWILL,
Deputy Clerk U. S. District Court for the District of Indiana.

And afterwards, to-wit: on the 13th day of February, 1903, said Receiver filed his bond in the above-entitled matter, in the words following, to-wit:

Know all Men by these Presents: That we, Frederick D. Connor, as principal, and the Fidelity and Deposit Company of Maryland and Louis Hartman, as sureties, are held and firmly bound unto the United States of America in the penal sum of Ten Thousand Dollars ($10,000) for the payment of which we bind ourselves, our heirs, executors and administrators firmly by these presents.

Signed and dated this 12th day of February, A. D. 1903.

The condition of the above obligation is such, that whereas, on the 11th day of February, 1903, the said Frederick D. Connor was duly appointed by the United States District Court for the District of Indiana as Receiver in Bankruptcy, to take charge of the property and effects of M. Zier & Company, the alleged bankrupt therein, until the further order of the Court therein:

Now if said Frederick D. Connor shall faithfully perform his duties as such Receiver as required by law and account for to said Court and pay over all moneys and property which may come into his hands as such Receiver by virtue of said order, then the above obligation shall be void, otherwise to be in full force and effect in law.

FREDERICK D. CONNOR.

FIDELITY & DEPOSIT CO. OF MARYLAND,

[SEAL.] By Willis Mullen,

Gen'l Agt. & Atty. in Fact.

LOUIS HARTMAN.

Approved by me this 13th day of February, 1903.

ALBERT B. ANDERSON,

Judge of the U. S. District Court.

Approved by me this 12th day of February, 1903.

NOBLE C. BUTLER,
Clerk of the U. S. District Court
at New Albany.
By George B. Cardwill, *Deputy.*

Approved by me this 11th day of February, 1903.

ALBERT B. ANDERSON,
District Judge.

Approved by me this day of February, 1903.

. . . . . .
U. S. Clerk.

And afterwards, to-wit: on the 16th day of February, 1903, Frederick D. Connor, receiver of said M. Zier & Company, filed his petition herein, in the words following, to-wit:

TO THE HONORABLE A. B. ANDERSON,
Judge of said Court:

Frederick D. Connor, heretofore appointed receiver of the property of said M. Zier & Company, respectfully shows to the Court: That the New Albany Trust Company, heretofore appointed and now acting as Receiver of said M. Zier & Company under appointment of the Floyd Circuit Court, of Floyd County, Indiana, has done such acts and so conducted itself as to give reasonable cause for the petitioner to believe that it will resist the order of the Court made herein, for the petitioner as Receiver of this Court to take charge and control of the property of said M. Zier & Company, and that it will disobey the order of the Court heretofore made herein, requiring it to deliver to the petitioner the property and effects of said M. Zier & Company.

The petitioner further represents that he has reason to believe that the Floyd Circuit Court of Floyd County, Indiana, and the Judge thereof will refuse to allow its

Receiver to obey the order of the Court made herein to take possession and control of the property and effects of said M. Zier & Company, and that be certain contempt proceedings will punish the petitioner in bankruptcy for taking any steps to have the said M. Zier & Company declared a bankrupt and for in any way interfering with the possession of said The New Albany Trust Company as Receiver of said property.

Petitioner further says that on the 14th day of February, 1903, said The New Albany Trust Company by W. W. Watts and J. R. Watts, their attorneys, and by Fred. Sauer, the Secretary, appeared in open court before the Hon. W. C. Utz, Judge of said Floyd Circuit Court, and filed its petition and report, a certified copy of which is filed herwith marked "Exhibit A" and made a part hereof; That thereupon after argument by said W. W. Watts the said Judge of said Court made and entered in said cause an order restraining and prohibiting the petitioners in bankruptcy herein from prosecuting the said cause in bankruptcy and from in any way molesting or interfering with the possesion of the said New Albany Trust Company as Receiver of said property of said M. Zier & Company, a copy of which order is filed herewith marked exhibit "B" and made a part hereof.

Wherefore your petitioner asks that he may be directed by an order of this Court what to do in the premises and what steps he shall take in order to obtain the possession of said property and for all necessary orders to govern his actions as such Receiver herein.

FREDERICK D. CONNOR,

Subscribed to and sworn to before me this 14th day of February, 1903.

WALTER G. HARRISON,

[SEAL.] *Notary Public.*

Com. expires Oct. 22 1905.

And afterwards, to-wit: On the 9th day of March, 1903, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled matter were had to-wit:

The petition of Inland Steel Company, a corporation, John C. Thurston and John Dey, doing business as Dey Time Register Company, that M. Zier and Company be adjudged a bankrupt within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered the said M. Zier & Company is hereby declared and adjudged bankrupt accordingly.

And at the same time, to-wit: On the 9th day of March, 1903, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above-entitled matter were had to-wit:

Whereas M. Zier and Company, a corporation of New Albany, in the County of Floyd and District aforesaid, on the 9th day of March, A. D. 1903, was duly adjudged a bankrupt upon a petition filed in this Court against him on the 6th day of February, A. D. 1903, according to the provisions of the Acts of Congress relating to bankruptcy.

It is therefore ordered that said matter be referred to Lawrence B. Huckeby, one of the referees in banbruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that said M. Zier and Company shall attend before said referee on the 1st day of April, A. D. 1903, at New Albany, and thenceforth shall submit to such orders as may be made by said referee or by this Court relating to said involuntary bankruptcy.

Pleas of the District Court of the United States for the District of Indiana, begun and holden at the United States Court House in the city of Indianapolis in said District, on the first Tuesday in November in the year of our Lord one thousand nine hundered and two, before Honorable Albert B. Anderson, Judge of said District Court.

United States
vs.
William W. Watts
and D. A. Sachs.
} No. 6377, Contempt.

Be it remembered that heretofore, to-wit, at the November term of said court on the 25th day of February, 1903, before Honorable Albert B. Anderson, Judge of said court, the following proceedings in the above-entitled cause were had, to-wit:

Comes now Joseph B. Kealing, Esq., United States Attorney, and files an Information in the above entitled cause in the words following to-wit:

UNITED STATES OF AMERICA,
District of Indiana.
} ss.

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF INDIANA.

November Term A. D. 1902, at Indianapolis.

Now comes Joseph B. Kealing, Attorney of the United States in and for the District of Indiana, who prosecutes for the said United States in this behalf in his own proper person and in the name and on behalf of the said United States, alleges, informs and declares as follows, to-wit: that in a certain proceeding in bankruptcy in the said District of Indiana, to-wit, in the matter of M. Zier & Co., bankrupts, case No. 37 in the said court pending at New Albany, Indiana, certain orders and decrees had been made by the said Uuited States District Court, the Hon. Albert B. Anderson presiding Judge, whereby Frederick D. Connor was appointed receiver

to take charge of the property, goods, wares and merchandise of the said M. Zier & Co., bankrupts aforesaid, that he had qualified as such receiver and had lawfully taken possession of the said property aforesaid then and there situated at New Albany, under and by virtue of the said order made by the court aforesaid, all of which more fully appears in the affidavit herewith and upon which this information is based. That on the 20th day of February, A. D, 1903, that Raymond J. Morris, Claude Sittason, Thomas Smithwick, Charles D. Kelso, William W. Watts and D. A. Sachs, whose given name is unknown to the affiant who made said affidavit, and to the Attorney for the United States herein, did then and there wrongfully, unlawfully, knowingly and forcibly take from the said Frederick D. Connor, receiver as aforesaid, the property, goods and chattels of M. Zier & Co., and then and there withhold wrongfully, knowingly and unlawfully the possession and custody of said property from the said Frederick D. Connor, receiver as aforesaid, well knowing at the time that he was lawfully appointed receiver of the said United States District Court aforesaid, and then and there knowingly, wrongfully, unlawfully and wilfully disregard and disobey the orders and decrees of the said court, all of which more fully appears in the accompanying affidavit, which is made a part hereof, whereby they are each guilty of contempt of this court, contrary to the form of the statutes and against the peace and dignity of the United States.

JOSEPH B. KEALING,
United States Attorney.

UNITED STATES OF AMERICA,
District Court of Indiana.

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF INDIANA.

BEFORE THE HONORABLE ALBERT B. ANDERSON, *Judge:*

In the matter of M. Zier & Company, against whom an action in Bankruptcy has been filed.

Comes now Clarles D. Kelso, the Receiver of M. Zier & Company under the appointment of the Honorable William C. Utz, Judge of the Floyd Circuit Court of Indiana, and Charles D. Kelso, individually, and for answer to the respective rules against him in the said above and foregoing entitled cause of action to show cause why he should not redeliver the property of the said M. Zier & Company into the possession and custody of Frederick D. Connor as Receiver of the said District Court of Indiana, sitting in Bankruptcy, and also to show cause why he should not be punished for contempt for the violation of the orders of said Court heretofore made in said above-entitled cause of action, says:

That on the 30th day of December, 1902, Joseph T. Ryerson & Son, as plaintiffs, commenced an action in the Floyd Circuit Court of Indiana against M. Zier & Company on several certain notes, then and there due, and demanded judgment against the defendant in the sum of fifteen thousand dollars ($15,000); that in said complaint it was shown that the said M. Zier & Company was indebted in the sum of sixty-five thousand dollars ($65,000) and was unable to meet its obligations and that the creditors of the said M. Zier & Company threatening to enter suits against it;

that said defendant was then and there without means and money with which to continue the operation of its business, that by said complaint the said plaintiff prayed for the appointment of a Receiver, that on said 30th day of December, 1902, the said complaint was by the said plaintiff in said cause carried to the Hon. William C. Utz, Judge of said Floyd Circuit Court, and the Hon. William C. Utz, as such Judge of said Court, was then and there requested and moved by the said plaintiff to appoint a Receiver for the said defendant, M. Zier & Company; that the said M. Zier & Company agreed to said application for the appointment of a Receiver and consented that said Judge of said Court might appoint a receiver therefor; that upon said day and upon consideration the said Judge of said Court entered a Vacation Order in said cause granting the application of said plaintiff in said cause for the appointment of a Receiver, and thereupon appointed the New Albany Trust Company as Receiver of the said M. Zier & Company, a certified copy of which order, marked "Exhibit A," is filed herewith attached hereto and by this reference thereto made a part of this Respondent's answer herein.

That the said New Albany Trust Company immediately on said day duly qualified as said Receiver and then and there took upon itself the duty of said Receivership, a certified copy of which acceptance and qualification of said Receiver, marked "Exhibit B," is filed herewith, attached hereto and by this reference thereto made a part of this respondent's answer herein.

That the said Floyd Circuit Court of Indiana and the Judge thereof in vacation were by the statutes of the State of Indiana delegated full and plenty power to appoint Receivers; that said Floyd Circuit Court and the Judge thereof are respectively the Constitutional Court and the Consti-

tutional Officer and made so by the Constitution of the State of Indiana.

That immediately thereafter the said New Albany Trust Company gave notice of its appointment as such Receiver in a newspaper printed and published in the City of New Albany, Floyd County, Indiana; that said Receiver made out an Inventory of the property of said M. Zier & Company which it had taken possession of upon its appointment as such on the said 30th day of December, 1902, and caused the same to be appraised, which inventory and appraisement was filed in the said Floyd Circuit Court, and that said Inventory showed that the appraised value of said property was about twenty-eight thousand and five hundred dollars ($28,500).

That on the 16th day of January, 1903, the said Receiver filed in the Floyd Circuit Court its report and petition wherein it sought the advice and instruction of said Court with respect to the continuance of the operation of said plant and prayed the court that a time be fixed for the hearing of said report and petition, and further praying that the said M. Zier & Company and its officers and the creditors of the said M. Zier & Company be notified by mail and by application of the time and place of the hearing of this report and petition, and requesting said creditors to appear and make known their recommendations or objections to the continuance of the operation of the plant of M. Zier & Company; that said petition further prayed that all cred-creditors of M. Zier & Company be required to prove their claims against this estate by filing proof thereof with this Receiver or by intervening petition in this cause, and that all creditors and persons be restrained and enjoined from prosecuting suits involving this estate in any manner except by intervening petition in this action. And thereupon and

upon consideration of this petition, the said Floyd Circuit Court made a certain order, a certified copy of which, certified under the Act of Congress, marked "Exhibit C," is filed herewith and by this reference thereto made a part of this answer of the respondent herein.

That on the 24th day of January, 1903, the time fixed for the hearing of the above-mentioned reports and the several matters involved therein, it was made to appear to said Court by the said Receiver that all the creditors of the said M. Zier & Company, as shown by the books of the said M. Zier & Company, had been notified by said Receiver to be present on said 24th day of January, 1903, and heard on said matters, and the following-named creditors being present in person or by attorney, to-wit:

"(See Exhibit C.)"

a copy of which last-mentioned order is now filed with this response and made a part hereof by reference thereto and marked "Exhibit D," and that by said last-mentioned order all creditors and other persons were enjoined and restrained from prosecuting the claims or suits against this estate except by intervention in this cause or by first obtain-leave of the said Floyd Circuit Court.

That the said Receiver of the said M. Zier & Company by the authority of the Floyd Circuit Court continued the operation of said plant of M. Zier & Company until the 14th day of February 1903, when at that time it filed in Floyd Circuit Court its petition wherein it showed to the Court that the Inland Steel Company, John C. Thurston and the Dey Time Register Company, as creditors of said M. Zier & Company, had filed a petition in the United States District Court of the District of Indiana, sitting in Bankruptcy, praying for an order of Involuntary Bankruptcy and that said Floyd Circuit Court, then and there, on said 14th day

of February, 1903, authorized said Receiver to proceed to Indianapolis, Indiana, and there by limited appearance and by protestation against appearance only, by petition upon such appearance upon appearance only, lay before the said District Court of the United States for the District of Indiana the facts with regard to the matters herein, which order of said Court is filed herewith, marked "Exhibit E," and by reference thereto made a part of this respondent's answer herein.

That afterwards and on the same day, to-wit, the 14th day of February, 1903, in said cause of action, John T. Ryerson & Son versus M. Zier & Company, then and there depending in the Floyd Circuit Court of Indiana, Frederick D. Connor, as Receiver, by George H. Hester, his attorney, and by leave and order of the said Floyd Circuit Court and upon his own motion, made himself a party to the said proceeding in the matter of the receivership of said M. Zier & Company, then and there depending in said Floyd Circuit Court, and thereupon and said 14th day of February, 1903, filed in the said Floyd Circuit Court, by leave of said Court, his verified petition showing his appointment as Receiver of M. Zier & Company by order of the United States District Court for the District of Indiana and praying the said Floyd Circuit Court for an order requiring the said New Albany Trust Company as Receiver of said M. Zier & Company, to turn over and surrender to him, the said Frederick D. Connor as Receiver in Bankruptcy, the property of said M. Zier & Company, to which the New Albany Trust Company, Receiver of said M. Zier & Company, under the orders of the Floyd Circuit Court had custody; and that the matter of said petition was continued in the said Floyd Circuit Court until the next term thereof, a certified copy of which proceedings by the said Frederick D. Connor in said Floyd Circuit Court

and the order showing his intervention in said cause, is filed herewith, marked "Exhibit F," and by this reference thereto is made a part of this respondent's answer herein.

That afterwards, to-wit, on the 19th day of February, 1903, before the Honorable William C. Utz, sole judge of said Court in vacation, W. W. Watts, as attorney for the New Albany Trust Company as Receiver for M. Zier & Company, appeared and filed before said Judge of said Court a written statement, which the Judge of said Court, after considering the same, refused to concur therein and found that the matters and facts therein stated showed that said W. W. Watts had been guilty of contempt of court and the said Judge ordered that a rule be issued against the said W. W. Watts to appear before him on the 21st day of February at 3 o'clock P. M. and show cause, if any he has, why he should not be punished for contempt; that said respondent now files with his answer herein a certified copy of the said statement of said Attorney W. W. Watts, filed and set out, together with a certified copy of the action of the said Judge thereon, which certified copy is attached hereto and marked "Exhibit G," and by this reference thereto is made a part of this respondent's answer herein.

That on the said 19th day of February, before the Hon. William C. Utz, Judge of said Floyd Circuit Court, in vacation, the New Albany Trust Company as Receiver for said M. Zier & Company tendered to the Judge of said Floyd Circuit Court its written resignation as said Receiver, and the Judge, after reading said tender of resignation, held that the matters therein set forth showed that said Receiver was in contempt of Court and then and there ordered that a rule issue at once against said Receiver to appear before the said Judge of said Court on the 21st day of February at 3 o'clock P. M. and show cause, if any he had or can, why

it should not be punished for contempt of Court, a certified copy of which written tender of resignation, together with the action of the Judge of said Court, thereon is attached hereto and marked "Exhibit H," and by this reference thereto is made a part of this respondent's answer herein.

That afterwards, to-wit, on the 20th day of February, 1903, the United States Tube Company, D. A. Sachs, its attorney, filed before the judge of said Court, its verified statement, wherein it prayed said Judge to remove said New Albany Trust Company from its trust as Receiver of M. Zier & Company; that said New Albany Trust Company appeared to said petition and avowed before the said Judge of said Court that it had surrendered the possession of the said property of said M. Zier & Company to Frederick D. Connor without the leave of said Court; that thereupon said Judge of said Court refused to accept the resignation of the said New Albany Trust Company as said Receiver, and then and there entered an order removing said Trust Company as said Receiver and in its place and stead appointed the respondent, Charles D. Kelso, as its successor, in the matter of the receivership of said M. Zier & Company; that this respondent immediately qualified as said Receiver and gave bond in the sum of thirty thousand dollars ($30,000) to the approval of the Judge of said Floyd Circuit Court; that this respondent was then and there ordered by the Judge of the said Floyd Circuit Court to demand of the said New Albany Trust Company and of the said Frederick D. Connor the immediate possession of the property of the said M. Zier & Company, which came into the hands of the said New Albany Trust Company as a Receiver herein, and that if the said New Albany Trust Company or the said Frederiek D. Connor shall fail and refuse to immediately turn over and surrender the possession of said assets to said Receiver, the

Judge of said Court ordered this Receiver to immediately report such refusal and failure to surrender said assets to said Judge for further action in the premises, all of which more fully appears from the certified copy of said petition of the United States Tube Company and the action of said Judge thereon, which is attached hereto and marked "Exhibit I," and by this reference thereto made a part of this respondent's answer herein.

That afterwards on the said 20th day of February, 1903, in obedience to the order of said Court, this respondent as Receiver of M. Zier & Company called upon the New Albany Trust Company and demanded that possession of all the assets of M. Zier & Company which came into its hands as Receiver thereof be surrendered to him, and that said Trust Company failed and refused to surrender the possession of the same for the reason that it claimed that it had turned over the Plant of the M. Zier & Company to said Frederick D. Connor; that for the other assets of said M. Zier & Company it intended to account forthwith to the said Judge of the said Floyd Circuit Court; that thereupon this Respondent as Receiver of M. Zier & Company, in further obedience to the order of said Judge, called upon the said Frederick D. Connor at his home in the City of New Albany, Indiana, and demanded of him the possession of all the property of said M. Zier & Company which had been turned over to him by the said New Albany Trust Company; that said Frederick D. Connor failed and refused to turn the same over to this Respondent. This Respondent says that he reported said facts last above recited to the Floyd Circuit Court on the said 20th day of February, 1903, and upon making said report the said Judge of said Court, upon consideration of said report, found that said Frederick D. Connor had been intermeddling with the assets of said estate, and it was there-

upon considered ordered and adjudged by the said Judge of said Court that a summary writ be issued, directed to the Sheriff of Floyd County, Indiana, requiring the said Sheriff to immediately seize and take into his possession and deliver over to the said Charles D. Kelso, Receiver of M. Zier & Company, all the property of the said M. Zier & Company which Fredrick D. Connor now has in his possession, which consists of the plant of M. Zier & Company, located at the corner of Pearl and Oak Streets, in the City of New Albany, including all tools, machinery, manufactured iron, scrap iron, appliances and other personal property therein situated, books, papers, accounts and choses in action, and that said Sheriff was by said order required to execute said writ forthwith, and upon the execution of said writ to make his return to the Judge of said Floyd Circuit Court, all of which last-mentioned proceedings appear more fully from the certified copy thereof, attached hereto and marked "Exhibit J," filed herewith and by this reference thereto made a part of this respondent's answer herein.

That this Receiver is informed and so states the fact to be that a writ was issued by the said Floyd Court of Indiana in compliance with the aforesaid order of the Judge of said Court and delivery to the Sheriff of Floyd County, Indiana, for execution: That said writ was delivered to said Sheriff on the 20th day of February, 1903, and was on the same day executed by him by seizing and taking from Frederick D. Connor the property described in said writ: that after the said Sheriff had taken said property from the said Frederick D. Connor, the said Sheriff, in obedience to the commands of said writ, delivered the same to this respondent, as receiver, under the appointment of said Judge as aforesaid, and not otherwise.

This respondent says that he did not take said property from said Connor, whether as receiver or otherwise, by force

or otherwise, but that his sole connection with said property was, as aforesaid, in receiving the same from the Sheriff of Floyd County, Indiana, under and in pursuance and in obedience to the orders of said Judge of said Floyd Circuit Court, and that his holding of said property is solely as receiver under said appointment and pursuant to and in obedience to the orders of the Judge as aforesaid and in no other capacity or manner whatever.

Respondent shows that at and prior to the time of his appointment as receiver, and at and prior to the doing of facts herein averred, this respondent was an officer of the Floyd Circuit Court, to-wit: an attorney at law, admitted to practice therein, and, as such subject to the orders of said court in all lawful matters that might be ordered by said court; that while he has been engaged in the practice of his profession in this honorable court, and, as such, an officer thereof, he has had scant experience in the bankruptcy practice, and prior to his appointment as receiver had no occasion to inform himself of the price lines of demarkation between the jurisdiction of the courts of the state of this court.

Respondent further says that in the city of New Albany and in the city of Louisville, and in the vicinity thereof, one D. A. Sachs, a member of the bar of the Louisville Courts and of the United States District,Circuit and Supreme Courts, has enjoyed for a long time the reputation of a competent, skilled and reputable lawyer, and especially familiar with the proceedings in bankruptcy matters, which reputation was known to this respondent, and as this respondent is informed and believes, was known to the Hon. William C. Utz, Judge as aforesaid, and that by the direction of said Judge this respondent, upon his appointment and qualification as receiver, employed said Sachs as his counsel in said

matters, and was in all respects guided by his opinion and advice, save in so far as he had explicit orders and directions from the Judge.

Respondent further says that all of his acts and doings in the premises were done not individually but as a receiverof said M. Zier & Co., as an officer of the Floyd Circuit Court, under the direction and in obedience to the orders of the Judge of said Court as aforesaid, and that as an individual and separate and distinct from his position as receiver, he has had and has now no connection whatever with said plant and has done nothing in the premises.

This respondent further says that long prior to the appointment of this respondent as receiver and the acts subsequent thereto, the Floyd Circuit Court, by its receiver, was in the actual, peacable and undisputed control and possession of the above and foregoing property and that the jurisdiction of the Floyd Circuit Court had attached over the person of said M. Zier and the subject-matter of said action by the voluntary appearance of said M. Zier & Co. to the complaint filed as herein shown by Joseph T. Ryerson & Son long prior to the time when the proceedings in involuntary bankruptcy above referred to were commenced in this honorable Court, and long prior to the passage of the amendment to the bankruptcy law approved on the 5th day of February, 1903.

He respectfully submits that at the time of the criminal appointment of a receiver for said M. Zier & Co. by the Judge of the Floyd Circuit Court, said Judge could not without a violation of his oath of office and his duties as such Judge, have refused to appoint such receiver, and through said receiver to take possession of said property, and that by reason thereof the said possession so taken of said property and plant of said M. Zier & Co. by said Court, through its

receiver, was not wrongful or illegal, but was legal and rightful, and that if it ever thereafter became wrongful or illegal, it became so solely by reason of the fact, as your respondent is informed by cousel in whose judgment and opinion he relies, because of the amendment to said Bankruptcy Act enacted and approved on the 5th day of February, 1903, and that by reason of the fact that said amendment to said Act was not and is not retrospective by said of said property, through its receiver, continued to be rightful and in accordance with the statutes of the United States in such a case made and provided.

This respondent further shows that upon the delivery to him by the Sheriff of the possession of said property, he employed one Thomas Smithwick as custodian thereof and placed him in charge of said property as such custodian, to the end that it might be cared for and preserved, and he submits to the court that the appointment by him of said Smithwick as custodian was not wrongful nor illegal unless the orders of said Judge of the Floyd Circuit Court, as aforesaid, were without jurisdiction and consequently void. And he asks that his return to said rule be taken and held by the court as the return not only for himself as receiver and as an individual, but for and on behalf of said Smithwick.

This respondent further submits to the court that if the possession of said property by said Floyd Circuit Court through its receiver, was valid and binding and if said Circuit Court had jurisdiction over the person of said defendants and of the subject-matter of said action, and consequently of said property, as this respondent is advised and believed by counsel that it had, its receiver so originally appointed, to-wit: the New Albany Trust Co., had no right, warrant or authority whatever, without the approval of

said Floyd Circuit Court, or the Judge thereof in vacation, to abandon or surrender the possession of said property or any portion thereof, to any other person without the consent, approval and order of the Floyd Circuit Court or the Judge thereof, in vacation, and this respondent avers that the surrender to said Connor, whether as receiver of this Honorable Court or otherwise, by said New Albany Trust Company, was not authorized by said Floyd Circuit Court and was without authority of law, unless said Floyd Circuit Court had originally no jurisdiction of the subject-matter of said action or had lost jurisdiction thereof by reason of the amendment to the Bankruptcy Act approved February 5th, 1903, or by reason of the pendency of the proceedings in bankruptcy herein.

This respondent further says that he has never at any time intended to violate any of the orders of this court, or in any wise interfere with its jurisdiction or the possession of said property by this Court, through its receiver or otherwise, but has only intended and endeavored to obey the orders of the Floyd Circuit Court and of the Judge thereof in the premises in matters in which he was at the time advised by his counsel he was compellable to obey such orders.

If upon the foregoing facts it shall appear to this court that he has in anywise or manner interfered with its jurisdiction, he submits that he does so upon the advice of counsel selected for him by the Judge by whom he was appointed, and upon whose advice and opinion he relied, and not with any intention or purpose whatever of interfering with the lawful orders of this court or its process, or of showing any disrespect to this court, the Judge thereof, its jurisdiction or orders, and if upon the foregoing facts this court shall be of the opinion that the Circuit Court, either originally had no jurisdiction of the subject-matter of said action or there-

after lost jurisdiction thereof by reason either of the amendment to said Bankruptcy Act of the 5th of February, 1903, or by reason of any of the orders that have been made by this court, and that because thereof this respondent ought to be directed as such receiver or otherwise, to surrender the possession of said property to said Connor as receiver of this court, or to this court, he respectfully submits that an order in that behalf ought to be made by this court, to the end that he might file and plead the same in said Floyd Circuit Court and to the Judge thereof as a justification for his conduct and doings in the premises, to the end that he may not be or appear to be in contempt or the orders of said Floyd Circuit Court or the judge thereof, and to the end that there should be no apparent controversy between this Honorable Court and said Floyd Circuit Court over said property or any matters whatever connected therewith, and that upon the entering of such order he may be discharged hence, or that the Court may make such other and further orders in the premises as may to the court appear just and proper and equitable in the premises.

WILLIAM A. KETCHAM,
Solr. for Respondents.

Thomas Smithwick respectfully shows to the Court that so far as he has any knowledge, information or belief upon the subject, his connection with the matters herein are set forth in the above and foregoing return, and he asks that the same be accepted as his return, to the proceedings herein. THOS. SMITHWICK.

Personally appeared before me, a Notary Public, the above-named Thomas Smithwick, and acknowledged the foregoing facts to be true as he verily believes.

ARTHUR F. SHAFER,
[SEAL.] *Notary Public.*

My commission expires Dec. 20, 1904.

Charles D. Kelso respectfully shows to the Court that so far as he has any knowledge, information or belief upon the subject, his connection with the matters herein are as set in the above and foregoing return, and he asks that the same may be accepted as his return to the proceedings herein.

CHARLES D. KELSO.

Personally appeared before me, a Notary Public, the above-named Charles D. Kelso and acknowledged the foregoing facts to be true as he verily believes.

ARTHUR F. SHAFER,

[SEAL.] *Notary Public.*

My commission expires Dec. 20, 1904.

UNITED STATES OF AMERICA, } ss.
District of Indiana. }

IN THE DISTRICT COURT OF THE UNITED STATES.

FOR THE DISTRICT OF INDIANA.

BEFORE THE HONORABLE ALBERT B. ANDERSON, *Judge:*

In the matter of M. Zier & Company, against whom a petition for adjudication in Bankruptcy has been filed. } In Bankruptcy.

Come now Claude Sittason, deputy sheriff of Floyd County, Indiana, and Claude Sittason, individually, and for answer and response to the rule issued herein do show cause why he should not redeliver the property of M. Zier

& Company to Frederick D. Connor, receiver of this Court, and also for answer and response to the rule to show cause why he should not be attached in contempt of this Honorable Court, most respectfully says:

That on the first day of January, 1903, he was duly appointed by Raymond J. Morris, the then acting and legally qualified sheriff of Floyd County, as his deputy sheriff; that he immediately qualified as such deputy sheriff and since then he has been acting as such deputy sheriff. He further says that on the 20th day of February, 1903, there was issued out of the Floyd Circuit Court, under the hand of the Clerk and seal of said Court, directed to the sheriff of Floyd County, Indiana, a writ in the words and figures following, to-wit:

STATE OF INDIANA.

To the Sheriff of Floyd County:

Greeting.

By order of the Honorable William C. Utz, Judge of the Floyd Circuit Court, which order was made in vacation, you are hereby commanded and required to forthwith take from Frederick D. Connor the possession of the boiler plant of M. Zier & Co., situated on the northeast corner of Pearl and Oak Streets in the City of New Albany, Indiana, together with all the tools, machinery, appliances, books, papers, accounts, choses in action, and all other personal property belonging to said M. Zier & Company and found in the premises of said M. Zier & Company at said point in the city of New Albany, Indiana, being the same property wrongfully and without leave of this Court surrendered to Frederick D. Connor by the New Albany Trust Company, formerly receiver of M. Zier & Company, and you are further required

by the order of said Judge of said Court to forthwith deliver said above-described property to Charles D. Kelso receiver of said M. Zier & Company, and of this writ make due service and immediate return thereof.

Witness, Charles B. Scott, Clerk of the Floyd Circuit Court, and the seal hereto affixed at the Court House in the City of New Albany, this 20th day of February, 1903.

CHARLES B. SCOTT,
[SEAL.] *Clerk of the Floyd Circuit Court.*
By William F. Ruoff,
Deputy.

That said writ immediately came to the hands of Raymond J. Morris, sheriff of Floyd County, Indiana; and that when said writ so came to the hands of said Raymond J. Morris, as such sheriff of Floyd County, said Morris, as such sheriff, notified this respondent as his deputy to go with him as a witness while he executed said writ. That he thereupon accompanied said Raymond J. Morris, as such sheriff of Floyd County, to the residence of Frederick D. Connor while said Morris as such sheriff served said writ by reading the same and by delivering a certified copy thereof to said Frederick D. Connor. That thereupon said Raymond J. Morris went to the plant of M. Zier & Company at Pearl and Oak Streets in the City of New Albany and County of Floyd; and upon the order and request of said Sheriff this respondent went with him. That said property at the time was in the possession of and control of one Charles Davis, and said sheriff thereupon told said Davis of his official authority who thereupon turned said property over to said Morris. That under the order and direction of said Morris, this respondent, as his deputy, remained in possession of said property for about ten minutes while said Morris as such sheriff went to

the Judge's room of the Floyd Circuit Court and reported the fact that he had so taken possession of said property; that at the end of about ten minutes said Morris returned and delivered the possession of said property into the hands of Charles D. Kelso, who claimed to have been appointed receiver of said property by the Floyd Circuit Court, and to whom said Morris by said writ and by the Judge of said Court was ordered and directed to deliver said property.

This respondent further says that he had nothing to do with the procuring of said order or with the issuing of said writ. That this respondent was subject to the orders of said Raymond J. Morris as sheriff of Floyd County, Indiana, and that he ignorantly and innocently believed that it was his right and duty to assist said Morris in the execution of said writ in the manner set out as aforesaid. That he acted in the utmost good faith, believing that it was his sworn duty as such deputy sheriff to do what he did do under said writ; that he believed that if he failed to do it, he would be subject to fine and punishment by the Floyd Circuit Court and to removal from his office. That this respondent believed that said order was valid on its face, and that all of his acts and doings thereunder were ignorantly and innocently done and performed without any intention of committing a contempt against the dignity, authority, judgments and processes of this Honorable Court, and wholly in the belief that it was the duty of the respondent to do and perform said acts.

Said respondent further says that he does not attempt to justify the acts of the Floyd Circuit Court in the premises; that he was not a party to the same; and that he had nothing to with the procuring of said proceedings or the issuing of said writ; that he neither advised nor counseled the same; that he regrets exceedingly the complications that

have arisen in this matter, and he regrets exceedingly the acts that he has done under said writ. He says that he stands ready and willing to do all that is within his power to remedy and rectify the acts and proceedings done by him under said writ.

Said respondent further says that for himself as an individual he has done and performed none of the acts complained of and that the same were all done and performed by him as the deputy sheriff of Floyd County, Indiana, under and by virtue of said writ and order so issued out of the Floyd Circuit Court, and under and by virtue of the orders of his superior, Raymond J. Morris, sheriff of Floyd County, Indiana.

Wherefore, said Claude Sittason, as sheriff of Floyd County, Indiana, and said Claude Sittason, as an individual, asks to be dismissed from the rules issued therein.

EVAN B. STOTSENBURG,
JOHN H. WEATHERS,
Attorneys for respondent.

UNITED STATES OF AMERICA,

STATE OF INDIANA.

Claude Sittason being duly sworn, upon his oath says that he is the respondent in the above-entitled matter and that the facts set out in said response are true as he is informed and verily believes.

CLAUDE A. SITTASON.

Subscribed and sworn to before me this 25th day of February, 1903.

NOBLE C. BUTLER,
Clerk.

UNITED STATES OF AMERICA,

UNITED STATES OF AMERICA, }
District of Indiana. } *ss.*

IN THE DISTRICT COURT OF THE UNITED STATES,

For the District of Indiana.

BEFORE THE HONORABLE ALBERT B. ANDERSON, *Judge.*

In the matter of M. Zier & Company, against whom a petition for adjudication in Bankruptcy has been filed. } In Bankruptcy.

Come now Raymond J. Morris, Sheriff of Floyd County, Indiana, and Raymond J. Morris, individually, and for answer and response to the rule issued herein to show cause why he should not redeliver the property of M. Zier & Company to Frederick D. Connor, Receiver of this court, and also for answer to the rule to show cause why he should not be attached for contempt of this honorable Court, most respectfully says:

That he was elected sheriff of Floyd County, Indiana, at the general election held in November, 1902, and that he took his office on the first day of January ,1903; and since that time he has been the duly elected, qualified and acting sheriff of said county of Floyd and State of Indiana. He further says that by the provisions of Sections of 5868 of the Revised Statutes of 1881 of said State of Indiana, the duties of this respondent as sheriff are defined and fixed as follows, to-wit:

"§5868. Duties.—Such Sheriff shall be a conservator of the pease within his county; shall arrest, without process, all persons who, within his view, shall commit any crime or misdemeanor, take them before the nearest Justice of the Peace of the county, and detain them in custody until the cause of such arrest has been investigated; suppress all breaches of the peace within his knowledge, having hereby given him authority to call to his aid the power of the county; pursue and commit to the jail of the county all felons; execute all process directed to him by legal authority, either in person or by deputy; attend upon and preserve order in all Courts of record in his county, except Justice's Courts; take care of the jail and the prisoners therein; and serve all process directed to him from the Circuit Court or from the Board of Commissioners, according to law.

That according to the provisions of said statute this respondent innocently and ignorantly believed that it was his duty to serve any and all order issued out of the Floyd Circuit Court, of which Court he was and is the sheriff, without regard to the legality of said writs or of the apparent fairness thereof. That on the 20th day of February, 1903, this respondent was absent on official duty in the County of Harrison and State of Indiana, until about six o'clock P. M. of said day; that upon his arrival home and at his office, he was informed by his deputy to be before the Judge of the Floyd Circuit Court sitting in chambers at seven o'clock P. M. of said day; that he reported to said Judge as required by said notice, and thereupon the Clerk of the Floyd Circuit Court delivered to him, under his hand and seal of office, the following writ from the Hon. William C. Utz, who was the sole and presiding Judge of the Floyd Circuit Court, to-wit:

"STATE OF INDIANA.

To the Sheriff of Floyd County:
Greeting.

By order of the Honorable William C. Utz, Judge of the Floyd Circuit Court, which order was made in vacation, you are hereby commanded and required to forthwith take from Frederick D. Connor the possession of the boiler plant of M. Zier & Co., situated on the northeast corner of Pearl and Oak Streets, in the City of New Albany, Indiana, together with all the tools, machinery, appliances, books, papers, accounts, choses in action and all other personal property belonging to said M. Zier & Company and found in the premises of said M. Zier & Co. at said point in the city of New Albany, Indiana, being the same property wrongfully and without leave of this court surrendered to said Frederick D. Connor by the New Albany Trust Company, formerly receiver of M. Zier & Co., and you are further required by the order of said Judge of said Court to forthwith deliver said above-described property to Charles D. Kelso, receiver of said M. Zier & Co., and of this writ make due service and immediate return thereof.

Witness, Charles B. Scott, Clerk of the Floyd Circuit Court, and the seal hereto affixed at the Court House in the City of New Albany, this 20th day of February, 1903.

Charles B. Scott,
[SEAL.] *Clerk of Floyd Circuit Court.*
By William Ruoff,
Deputy."

That said writ required this respondent, as sheriff of Floyd County, Indiana, to take possession of the boiler plant of M. Zier & Co., together with all the tools, machinery,

appliances, books, papers, accounts, choses in action, and all other personal property belonging to said M. Zier & Company, and deliver the same to Charles D. Kelso, appointed receiver by said Floyd Circuit Court.

This respondent further says that he had nothing to do with the procuring of said order or with the issuing of said writ. That since he has been the sheriff of Floyd County he has been consulting Evan B. Stotsenburg, a regular practicing attorney of the Floyd Circuit Court, as his legal adviser in matters affecting his official conduct; that as soon as he received said writ he telephoned to said Evan B. Stotsenburg to ask his opinion as to what his duties were under said writ; that he ascertained that said Evan B. Stotsenburg was confined to his bed by sickness, and that he was unable to, and did not, and could not procure his advice. That thereupon this respondent, ignorantly and innocently believing that it was his right and duty to execute said writ according to its terms, and acting in good faith and with pure motives, and with no intention of insulting this Court or defying its orders, judgments, and processes, executed said writ by reading the same to and within the presence and hearing of said Frederick D. Connor at his home in the City of New Albany, Indiana, and also by delivering to him a certified copy of said writ. That upon said Connor refusing to deliver possession of said property described in said writ, this respondent thereupon went upon said property and demanded the same from the possession of one Charles Davis, who was in possession thereof, and from whom this respondent learned that he was in possession of the same as agent and representative of said Connor. That upon this respondent notifying said Charles Davis of the fact that he was sheriff of Floyd County, Indiana, and of the fact that he had said writ, said Charles Davis, upon

the demand of this respondent, delivered said property over to this defendant, who thereupon put his deputy, Claude Sittason, in temporary possession thereof. That after this respondent had so put his deputy in possession of said property, he verbally reported to said Honorable William C. Utz, Judge of the Floyd Circuit Court, what he had done: and asked for further instructions in the matter. Thereupon he was informed by the Honorable William C. Utz, as such Judge, that it was his duty to fully execute said writ by turning said property over to Charles D. Kelso, who had been appointed receiver thereof by said Honorable William C. Utz, as such Judge. That thereupon in obedience to said writ and command of said Judge, and ignorantly and innocently believing that it was his duty to do so, he turned over said property to said Charles D. Kelso, as such receiver, who has ever since had possession of said property. That thereupon this respondent, as such sheriff, made the following return to said writ:

"This writ came to hand at eight o'clock P. M. on the 20th day of February, 1903, and I have served the same by reading the within to and in the presence and hearing of Frederick D. Connor, and delivering to him a certified copy of the same; and the said Connor refused to deliver the possession of the property described in the within writ, whereupon I seized and took possession of the within described property and have turned the same over to Charles D. Kelso, receiver of M. Zier & Company.

"Dated this 20th day of February, 1903. Served in Floyd County, Indiana.

RAYMOND J. MORRIS,
Sheriff of Floyd County, Indiana."

That without justifying or attempting to justify the action of the Floyd Circuit Court in the premises, he is informed and believes that said Floyd Circuit Court purported to so act in the premises by the provisions of Section 1226 of the Revised Statutes of Indiana of 1881, which provides:

"§1226. Failure to deposit—Order to Sheriff. Whenever, in the exercise of its authority, a Court, or the Judge thereof in vacation, shall have ordered the deposit or delivery of money or other thing, and the order is disobeyed, the Court or the Judge, besides punishing the disobedience as for contempt, may make an order requiring the Sheriff to take the money or thing, and deposit it or deliver it in conformity with the direction of the Court or Judge thereof."

But be that as it may this respondent says that in all things done by him in the premises he acted in the utmost good faith, believing that it was his sworn duty as such sheriff to execute said writ so issued out of said Court according to its terms, and that if he failed to do so, he would be subject to fine and punishment by the Court, to removal from his said office, to punishment under the criminal laws of the State of Indiana, and to impeachment. That this respondent believed that said order was valid upon its face, and that all his acts and doings thereunder were ignorantly and innocently done and performed without any intention of committing a contempt against the dignity, authority, judgments and processes of this Honorable Court, and wholly in the belief that it was the duty of this respondent to do and perform said acts. This respondent further says that he does not attempt to justify the acts of the Floyd Circuit Court in the premises, that he was not a party to the same, that he had nothing to do with the procuring of said proceedings, or the issuing of said writ, that he neither

advised nor counseled the same, that he regrets exceedingly the unfortunate complications that have arisen in this manner, and he regrets exceedingly the acts that he has done under said writ. He says that he stands ready and willing to do all that is within his power to remedy and rectify the proceedings and acts done and performed by him under said writ. This respondent further says that since he performed and did the acts above set out under said writ, he has been informed by his counsel that when he ascertained that said property was in the hands of the receiver of this Court, he should have appeared in this Court and presented his writ and the authority under which he was purporting to act, for the consideration of the Court.

This respondent further says for himself as an individual he has done and performed none of the acts complained of, but that the same were all done and performed by him as sheriff of Floyd County, under and by virtue of said writ and order so issued out of the Floyd Circuit Court.

Wherefore, said Raymond J. Morris, as sheriff of Floyd County, Indiana, and said Raymond J. Morris as an individual, ask to be dismissed from the rules issued against him herein.

EVAN B. STOTSENBURG,
JOHN H. WEATHERS,
Attorneys for respondent.

UNITED STATES OF AMERICA, }
State of Indiana. } *ss.*

Raymond J. Morris, being duly sworn upon his oath, says that he is respondent in the above-entitled matter, and that the facts set out in said response are true as he is informed and verily believes; and further says not.

RAYMOND J. MORRIS.

Subscribed and sworn to before me this 25th day of February, 1903.

NOBLE C. BUTLER,
Clerk.

And thereupon replications are filed to the foregoing answers, in the words following, to-wit:

Comes now the petitioner, Frederick D. Connor, Receiver, and files for reply to the answer and showing made by Charles D. Kelso, and in behalf of Thomas Smithwick to the charge of wrongfully keeping the possession of the property of said bankrupts from the possession and control of the receiver, denies each and every material allegation therein contained.

GEO. H. HESTER,
Atty. for Petitioner.

Comes now the petitioner Frederick D. Connor, Receiver, and for reply to the answer and showing made by Raymond J. Morris, the sheriff of Floyd County, Indiana, to the charge against him of wrongfully taking the property of said bankrupt from his possession and control and for contempt of this court, denies each and every material allegation therein contained.

GEO. HESTER,
Atty. for Petitioner.

Comes now the petitioner Frederick D. Connor, Receiver, and for reply to the answer and showing of Claude Sittason, deputy sheriff, in the charge of contempt of this court in taking wrongful possession of the property of said bankrupt, denies each and every material allegation contained in his said answer.

GEO. H. HESTER,
Atty. for Petitioner.

And this cause coming on to be tried, and the court having heard a part of the evidence herein, doth now adjourn until 9 o'clock to-morrow morning.

And afterwards, to-wit, at the November Term of said Court, on the 26th day of February, 1903, before Honorable Albert B. Anderson, Judge of said court, the following further proceedings in the above-entitled cause were had, to-wit.

Comes now Joseph B. Kealing, United States Attorney, and the defendants in person and by their attorneys also come, and the court having further heard the evidence herein doth now adjourn until 9 o'clock to-morrow morning.

And afterwards, to-wit, at the November Term of said Court, on the 27th day of February, 1903, before Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above-entitled cause were had, to-wit:

Comes now Joseph B. Kealing, United States Attorney, and at the same time also comes said defendant Charles D. Kelso in person, and by counsel, and this cause coming on to be further heard, is now submitted to the court upon the evidence; and the court being sufficiently advised doth find that said defendant is guilty of the contempt charged.

It is therefore considered by the Court that said defendant, Charles D. Kelso, for the offense charged be imprisoned and confined in the jail of Marion County, Indiana, for the term of sixty days, and that he do pay unto the United State, the cost of this proceeding, taxed at $. . . ., and that he do stand committed until said costs are paid.

Comes now Joseph B. Kealing, United States Attorney, and at the same time also comes Raymond J. Morris, in person and by counsel, and this cause coming on to be further heard, is now submitted to the court upon the evidence; and the court being sufficiently advised doth find that said defendant is guilty of the contempt charged.

It is therefore considered by the court that said defendant, Raymond J. Morris, for the offense charged be imprisoned

and confined in the jail of Marion County, Indiana, for the term of twenty days, and that he do pay unto the United States the cost of this proceeding, taxed at $. . . . , and that he do stand committed until said costs are paid.

Comes now Joseph B. Kealing, United States Attorney, and at the same time also comes Claude Sittason in person and by counsel, and this cause coming on to be further heard, is now submitted to the court upon the evidence; and the court being sufficiently advised doth find that said defendant is guilty of the contempt charged.

It is therefore considered by the court that said defendant, Claude Sittason, for the offense charged be imprisoned and confined in the jail of Marion County, Indiana, for the term of ten days, and that he do pay unto the United States the cost of this proceeding, taxed at $. . . . , and that he do stand committed until said costs are paid.

Comes now Joseph B. Kealing, United States Attorney, and at the same time also comes Thomas Smithwick in person and by counsel, and this cause coming on to be furthur heard, is now submitted to the court upon the evidence; and the court being sufficiently advised doth find that said defendant is guilty of the contempt charged.

It is therefore considered by the court that said defendant, Thomas Smithwick, for the offense charged be imprisoned and confined in the jail of Marion County, Indiana, for the term of ten days, and that he do pay unto the United States the cost of this proceeding, taxed at $. . . . , and that he do stand committed until said costs are paid.

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15 Orig.

Supreme Court of the United States.

In re WILLIAM W. WATTS.

TRANSCRIPT OF EVIDENCE.

P. C. BURKMACHER PRESS, LOUISVILLE, KY

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IN THE

District Court of the United States

FOR THE DISTRICT OF INDIANA.

In the matter of M. Zier & Company, against whom a petition in bankruptcy has been filed.

UNITED STATES, vs. W. W. WATTS, AND D. A. SACHS.	Citation for Contempt.

Frederick D. Connor, a witness called on behalf of the government, being duly sworn, and examined by Mr. LaFollette, testified as follows:

Q. You may state your name to the Court.

By Mr. Smith: In order to save the question that Judge Miller spoke of, we desire to object. We understand your Honor has ruled on the question, but we want to save the question as to the introduction of any evidence after the filing of the response; in other words, upon the idea that the response has purged the contempt.

By Mr. LaFollette: I do not think it is necessary to argue that proposition.

Mr. Miller: We do not want to argue it.

The Court: You are objecting to the introduction of any evidence.

Mr. Smith: Yes, sir.

The Court: The objection is overruled.

Mr. Fairleigh: We want our exception reserved.

By Mr. LaFollette:

Q. Where do you reside?

A. My name is Frederick D. Connor; I live in New Albany, Indiana, Floyd County.

Q. You may state to the Court whether or not you are acquainted with M. Zier & Company—whether you know of that firm?

A. I am acquainted with them.

Q. Where was it doing business within the past year?

A. On the corner of Oak and Pearl Streets in the City of New Albany, Indiana.

Q. You may state if you were appointed a receiver of that concern by virtue of certain bankruptcy proceedings that were instituted in the District Court of this District?

A. I was.

Q. You may state about what time, if you remember, you received your evidence of appointment?

A. I think I received it on the twelfth day of February. I was appointed on the 11th and I got it the following day, I think.

Q. At the time that you were appointed, you may tell the Court who was in possession of the property of M. Zier & Co.?

A. The New Albany Trust Company as receiver under the Floyd Circuit Court.

Q. What steps if any did you take to get possession of the property?

A. About the time I received the order appointing me I also received a note from the clerk to defer any action until a hearing was had on the following Monday.

Q. Were you here on the following Monday?

A. No, sir.

Q. You may go on and tell what you did?

A. After that hearing, I think on the 19th of February, I received a copy of my original order of appointment, with instructions to proceed to the Trust Company and demand that the property be turned over to me. Subsequent to that, however, I had a notice that some arrangement had been made here by which they would turn the property over to me on the 15th or 16th—the 16th I think it was.

Q. You may state whether or not you had prior to that time filed a petition in the Circuit Court of Floyd County to have the property turned over to you?

A. I had.

Q. You had filed that?

A. Yes, sir.

Q. Was that prior to the arrangement made to have a further argument of the question here in this Court?

A. I think it was.

Q. Do you know what was done on your petition?

A. No, I do not. I do not think any action was taken on it. I did not get any order.

Q. You did not get any notice of any action?

A. No, sir.

Q. After that, you may go on and tell what you did about making demand on the Trust Company and whom you saw and what you saw?

A. On the 19th of February about nine o'clock in the morning, I think, I went to the Trust Company's office and presented a copy of my original order that I received from this Court, from the clerk, to the Secretary of the Trust Company, Fred. Sauer, and demanded the property. He stated that the Vice-President, Mr. Jewett, was not present, but would be in shortly and that he would act upon the matter. I waited there sometime and Mr. Jewett came in and I demanded of him the property, and he handed me a document he had received, a petition that he had made to the Floyd Circuit Court and on that a written statement to me, asking me if I could not delay the matter, that he had laid it before the Judge and the Judge had said orally, that he would like for him to hold it in his hands that he would like for him to hold it in his hands until he could render his account to that Court, which they would make out othe next day or shortly, but if I insisted, that he would turn it, the property, over to me as he had agreed to do in this Court. I insisted and he turned it over to me—gave me the keys.

Q. What he gave you there was the keys to the plant?

A. Yes, sir, the keys to the plant.

Q. If you know, what did that give you access to?

A. That gave me access to the building, the enclosure out there, the property of the plant, and the office books and safe, that was all.

Q. That was all that was turned over to you there at the Trust Company office?

A. Yes, sir.

Q. Just the keys to the plant?

A. Yes, sir.

Q. About what time in the day was that?

A. That was about half past ten in the moring.

Q. Of what day?

A. 19th.

Q. Do you remember what day of the week that was?

A. I think it was on Thursday.

Q. What did you do after receiving the keys about going to the place and going into the plant, if anything?

A. I took a gentleman named Norton, Mr. Joseph Norton, up there and put him in charge of it as custodian, unlocked the place and took him in and gave him the keys to the front door and told him to take charge of it for me.

Q. That was on Thursday forenoon, you think?

A. Yes, sir.

Q. During that day did your man that you put in charge remain at the place?

A. Yes, sir.

Q. Were you about there at any time during the day after Mr. Norton went in charge?

A. About four o'clock in the afternoon of that day, I took another man out there and put him in charge, that is took him inside and told him his duty and gave him the keys to take charge of it as night watchman.

Q. You arranged for a custodian both in the day time and at night?

A. Yes, sir.

Q. You may state whether or not you had any conversation during the time that the property was in your custody with either Mr. Sacks or Mr. Watts, the attorneys?

A. I did not.

Q. You did not have any talk with them?

A. I did not.

Q. Was Court in session, if you know, during that time, the Floyd Circuit Court?

A. I don't think it was—I am not sure about it.

Q. You may tell the Court, what, if anything, occurred in the way of any notices or writs of any kind being served upon you while you were in possession of the property?

A. About seven o'clock on Friday evening Mr. Kelso came to my house and I admitted him and took him back into the sitting room and he stated that he had come to notify me that he was appointed Receiver by the Floyd Circuit Court in place of the New Albany Trust Company and therefore demanded the surrender of the property of M. Zier & Co. and I refused to surrender or turn it over to him.

Q. You say that was about seven o'clock in the evening?

A. Yes, sir. He said, "very well, you obey your Court and I will obey mine." That is the substance of what he said.

By the Court:

Q. Who said that?

A. Mr. Kelso.

By Mr. LaFollette:

Q. Was that at your house?

A. Yes, sir.

Q. Did you go out of your house during that evening—

A. No, sir.

Q. —or did you remain at home?

A. I remained at home.

Q. Was there anything further occurred during the evening with reference to this property?

A. About eight o'clock, between eight and half past eight, the door-bell rang and I went there and found the sheriff, Mr. Raymond Morris, and the deputy sheriff, Mr. Claud Sitason. I admitted them into the hall and the sheriff proceeded to

read a writ to me, I suppose it was, he read the order and then read the demand that I turn the property over to him as sheriff; and he gave me the copies of those that are in the files.

Q. What did you do about turning over the property?

A. I refused to turn it over to him. He said very well, I will go and take charge of it and turn it over to Mr. Kelso, the Receiver.

Q. Did you go out with him?

A. No, sir.

Q. After giving you that notice, he and the deputy went away?

A. Yes, sir.

Q. Did you have any further notice or know anything about the property during that evening or night?

A. No, sir—well, I think my watchman notified me that they had come there and taken charge of it, put him out.

Q. You learned that from your watchman?

A. Yes, sir.

Q. When did you next go to take the property after that night?

A. I went back to it after I had been up here to Court.

Q. You may tell how long it was held, if at all, by the sheriff, or by Mr. Kelso, if you know?

A. I presume—I understood he turned it over to Mr. Kelso that night. And Mr. Kelso held it until the Monday following, the Sunday night or Monday. He was cited to appear at this Court.

Q. It was after that that you got the property back again?

A. Yes, sir; after the hearing in this Court I got the property back again. I got it on the next Saturday night following.

Q. You may state whether or not there were any proceedings in the Court on the days following the appearance of the sheriff at your house, that you know of?

A. I could not say exactly; I saw a number of gentlemen going into the Courthouse in different places there.

Q. Did you yourself have any talk with the Judge of the court or with any of the attorneys about the matter?

A. I think not.

Q. You may state whether or not Mr. Sachs and Mr. Watts, the two attorneys charged here, were at New Albany on Friday or Saturday, following the time the property was taken from you, if you know?

A. I saw them there on the Sunday following and the Monday, I think. I saw them on Monday following anyway, and I think on Sunday too.

Q. Did you know personally of the proceedings that were instituted to secure the writ that was given to the sheriff to take the property from you?

A. No, sir.

Q. You did not know about that?

A. No, sir.

Q. Did you have any talk with Henry Jewett after the morning when he gave you the keys?

A. No, sir; I believe not.

Q. Was there any of the funds belonging to the firm of M. Zier & Co., turned over to you, moneys or credits, or anything of that kind?

A. Not at that time.

Q. There was no conversation about that at that time, was there?

A. No, sir.

By the Court:

Q. When did you get possession of the books of this firm?

A. I did not get possession of the books and safe until after I came back from this Court, after Mr. Kelso had abandoned the property.

Q. Did you examine the books?

A. Yes, sir.

Q. Do you know when the receivership suit was commenced in the State Court—do you remember the date?

A. I think it was the 30th day of December.

Q. Did you examine the books to ascertain whether or not any payments were made by the alleged bankrupt about that time?

A. Yes, sir.

Q. What did you ascertain about that?

A. I found, I think, on the 29th of December, $3100 was paid to Ryerson & Sons—that is, orders on another company, the New River Lumber Co. that owed Zier. He gave Ryerson & Son orders, I think, for about $3100. or something.

Q. Who were Ryerson & Son—what if anything did they have to do with the receivership?

A. I do not know; they are some kind of iron dealers in Chicago.

Q. They were plaintiffs, were they not, in the suit in the Floyd Circuit Court?

A. That I don't know except what I saw in the papers.

Q. What else did you find was paid out about that time, if anything?

A. I found on the 30th of December, an entry in the Journal that M. Zier paid C. L. & H. E. Jewett $600 as attorneys' fees and expenses for M. Zier & Co.

Q. What was the date of that payment as shown by the books.

A. The 30th day of December.

Q. What further payment did you find had been made on that date?

A. I found where they had paid C. L. & H. E. Jewett $9000. to be delivered to Minnie M. Zier, sister-in-law of M. Zier, the principal in this company.

Q. Did you discover who paid that money to the Jewetts, that $9000.

A. I think it was M. Zier.

Q. Did you discover where M. Zier got the money and how?

A. I discovered from the books.

Q. What did you discover?

A. From the cash book Mr. Zier drew $400. on the 21st day of October, cash from the bank and charged to Expense.

Q. Did you find the orders by which he drew the money out of the corporation?

A. I found the check.

Q. How was it done, by padding the pay-rolls?

A. That first item of $400 was charged to Expense. And afterwards in another handwriting written over it, was "this money was paid to Minnie M. Zier by M. Zier on account." That entry was made in a different handwriting in different ink. Then I found on the 28th that he drew some $1800 charged to payroll and the payroll was $824. The whole amount was charged to payroll and there was an entry over that in another handwriting, saying, "$1000 of this was paid to Minnie M. Zier by M. Zier on account." And I found on every pay day following that up to the 20th of December, that he drew $1000. more than the amount of the payroll with that same kind of entry interlined in the books.

By Mr. LaFollette:

Q. How was that?

A. I said every pay day after the 28th of October he drew $1000. more than the pay roll.

Q. How frequently were the pay days?

A. Every week; every Saturday, I think it was. The total sum of those overpayments or overdrafts was $8600.

Q. Is that an additional sum of money other than the $9000 you referred to?

A. No, sir; that is the same $9600. I have here the checks.

Q. The dollars $9600 stated before, $9000 in one item $600 in another?

A. Yes, sir; these checks show they were drawn for the payroll and they are charged on the books to payroll.

Q. The way the $9000 or the $9600 in fact, was taken out of the concern was by its appearing on the books that it was $1800 each payroll?

A. Yes, sir.

Q. When as a matter of fact the payroll itself was $800 and the $1000 additional to be sent to Minnie M. Zier?

A. That was all charged to payroll by the bookkeeper originally and subsequently someone had written over the items, "$1000 of this amount was paid to Minnie M. Zier by M. Zier on account."

Q. Do you know, or have you learned when that entry was made on the books showing that part of it was paid to Minnie Zier and who entered it?

A. The bookkeeper was Harry Ury; he made the original entry and the subsequent entries or interlineations, I do not know who made them. The sum seems to have been charged on the books on the 30th of December, exactly $9600., but these accumulations came in that way from the 21st of October to the 30th of December.

Q. One of these checks is for only $400?

A. That is the first one he drew and that he charged to expense without any itemized statement.

Q. Was there any additional entry made in regard to that or did it still stand on the books as charged to expense?

A. He added to that same amount that "this amount was paid to Minnie M. Zier by M. Zier on account."

Q. On October 25th the check was for $1827.?

A. That is $1000 over the payroll.

Q. The next one is dated November 1st, and is $1931?

A. That is $1000 more than the payroll.

Q. The next one is dated November the 7th and is $1819? Was that $1000 in excess of the payroll?

A. Yes, sir.

Q. The next one is dated November 15th, $1855?

A. That was $1000 more than the payroll.

Q. And the same entry in regard to it.

A. The same entry all along.

Q. And then each of those subsequent orders following Nov. 22, Nov. 29, Dec. 6, Dec. 13, Dec. 20—

A. Just a week apart.

Q. And Dec. 28th—

A. No, it stops—

Q. —on December 20th. Yes, with December 20th. And here is another item dated Oct. 28th, a check from $400.

A. Yes that was charged to expense.

Q. That was the same as October 21st?

A. Yes sir.

Q. Charged to expense, but afterwards an entry saying it was paid to Minnie Zier?

A. Yes sir.

By Mr. Miller;

Q. This $9600, is that the entire sum that was paid out, or is that in addition to what was paid Mr. Jewett?

By Mr. LaFollette: It includes the amount, am I right?

The Court: $9600 was paid at the time, $600 for their attorneys fees and $9000 to hand to Minnie Zier, of Minneapolis. The $9600 is charged,—

Mr. Miller: Is that the total?

The Court: And this testimony just given shows how Zier abstracted that money from the funds of the company.

Mr. LaFollette: I think that these checks that have been identified by Mr. Connor and explained by him should go in evidence.

The Court: They can go in evidence, but they must be preserved hereafter and if they go into the record they must go by copy; those things are things that the court will require hereafter.

Mr. LaFollette: Possibly they are referred to explicitly enough by the evidence and in view of that fact probably Mr. Connor had better keep them.

Q. Referring to this matter of the books, since it has been suggested I want to ask you I believe you state that up to the time the property had been taken from you by the sheriff you had not yet had the books?

A. No sir.

Q. Tell the court why you had not?

A. On the morning of the 19th when I got the keys to this plant from Mr. Jewett, Mr. Zier came into the Trust Company and I asked him if he would unlock the safe for me so that I could get possession of the books. And he declined to answer. I asked him another question or two about a car load of stuff that was there about switching on to his track, and he would not answer that and I went over and sat down by the desk with him and I told him this was a matter—

Mr. Miller: I do not want to be objecting, but unless the District Attorney will say that he expects to connect our client with Mr. Zier, I do not think this evidence is competent.

The Court: I do not think the conversation between this witness and Mr. Zier is competent, but I do think that the fact that this witness is receiver of this court and as receiver demanded that he be given the books and papers of this corporation and refused and the fact that subsequent to that time the books and papers were given in custody of another party and after that the books were found to be interlined, those facts are competent.

Mr. Miller: They are not competent as to us, unless we are connected with it.

The Court: Certainly your client will not be responsible unless connected with it.

Mr. Miller: Ordinarily the rule is to require the district attorney to say that he expects to connect the defendant.

The Court: He has said that in his information.

Mr. Miller: He does not say so. He charged us with simply resisting the execution of an order and taking property from the hands of a receiver.

The Court: However that may be, I will say now, of course, Mr. Sachs and Mr. Watts will not be held unless the evidence connects them with this unlawful conspiracy which was carried out against this property in the possession of the receiver.

Mr. Miller: He don't even charge us with conspiracy.

The Court: I do.

Mr. Miller: He don't.

The Court: The only question here is are the defendant's counsel right in their point, whether or not these defendants took part in this unlawful wresting of this property from the hands of the receiver of this court. That is the question here. Unless they are shown to have aided, abetted, counseled, or encouraged or some way engaged in it, they are not responsible for it, but if they did aid, counsel, abet, or encourage, they are responsible just as much as those who did it.

Mr. LaFollette: And the reason I asked these other questions—I don't care about the conversation, I simply want the incidents and the various steps as we proceed with the matter.

The Court: And the court rules that the circumstances are competent.

Q. You may state whether or not in response to the question you asked about the opening of the safe, whether it was open?

A. It was not.

Q. You may state whether or not during the time you had possession of the property, Thursday and up to Friday night, you had during that time been able to have the safe opened and examine the books of M. Zier & Company?

A. I had not.

Q. You may state whether or not there were any papers in the desk in the office of the company or whether you had a key to the desk?

A. I think I found the keys to the desk in the safe after it was opened some time after Mr. Kelso had it.

Q. You may state whether or not you were able by virtue of any desks or places that you did have access to

find any record of the proceedings or business methods of the concern?

A. I was not.

Q. You may state whether or not, if you know, there were any books taken away from the plant during the time that the property was out of your hands until it came back to you again?

A. I could not tell that only from the testimony I heard in court here.

Q. You do not know personally?

A. No sir.

Q. Except that you learned that some papers were taken away?

A. No sir.

Q. Do you know whether the books were taken away from the safe during that time?

A. I could not tell you.

Q. You have not the books here with you?

A. No sir.

Q. When you got the property back was after you had been up here and probably a week had elapsed and then you had the safe opened?

A. Mr. Zier opened it for me after we went back from the court.

Q. That was the first time you had access to the safe?

A. Yes sir.

Q. Was that the first time you had seen the books?

A. Yes sir.

Q. You may state whether or not it was after that that you got those checks you have here?

A. Yes sir it was since that time that I got these checks.

Q. Who gave them to you?

A. I found them myself.

Q. Where were they?

A. They were in an old box in the vault, an old vault, back in the corner of the office.

Q. Where were the books when you got the safe open? Where did you find them?

A. They were in the safe.

Q. How many books were there in which the accounts of the concern had been kept and what system of book-keeping did they have?

A. They had a cash book and a journal or day book journal. I dont think they kept a regular day book and a patent ledger, that is, a locked back to take sheets out and put them in as the case required.

Mr. Miller: It seems to me that this is too remote to have any bearing on this question here. The district attorney

may be trying to find evidence against somebody else, but it does not seem to me that this competent against us.

The Court: What was the last question?

Mr. Miller: It was as to the method of bookkeeping of M. Zier & Co.

The Court: Has he answered the question?

The Reporter: Yes sir.

The Court: There don't seem to be anything to rule on now.

Q. You may state to the court whether or not since you have taken possession of the concern since you were up here before this amount of money which was transferred from the concern, by these excessive vouchers or checks have been repaid to you as receiver of the concern?

Mr. Miller: I believe for the purpose of cutting this short, I will object to that; I do not see how that can affect my client.

The Court: I will overrule the objection. I do not know what the purpose is.

Q. This $9600, has it been paid to you?

A. I received from Col. Charles L. Jewett $534.84 of the $600 that he got of that money for fees and expenses but the balance of it I have not received.

Mr. Fairleigh: We move to strike out all of this evidence as to preferential payments made anterior to these proceedings. I do it in this form to save time.

The Court: Overruled.

Mr. Fairleigh: Give us an exception.

Henry E. Jewett, a witness called for the government, being duly sworn, and examined by Mr. LaFollette:

Q. State your name to the Court?

A. Henry E. Jewett.

Q. You reside at New Albany?

A. Yes sir.

Q. Are you connected with the New Albany Trust Company?

A. Yes sir, vice president.

Q. Did you have active management of the company during the time that it was receiver for M. Zier & Co.?

A. Yes sir, I assisted in the management of the company.

Q. You are acquainted with Michael Zier?

A. Yes sir; I have known him probably ten or fifteen years.

Q. And the "company." Did you know what was known as M. Zier & Co.?

A. Yes sir.

Q. Do you know who constituted the firm besides Michael Zier?

A. Do you mean before the incorporation?

Q. It is an incorporated company, now?

A. Yes sir.

Q. Do you know who the stockholders are,—are there many of them?

A. I think there are only four, Michael Zier, and his brother, now dead, Edward Zier, Minnie Zier, the wife of Edward Zier, and H. E. Urey, I do not know whether his name is Harry or Henry. He goes by the name of Harry; it is H. E. Urey.

Q. Minnie Zier is the widow of Edward Zier who was one of the stockholders in the M. Zier and Company concern?

A. Yes sir.

By the Court:

Q. Her husband was a stockholder?

A. Yes sir.

Q. And she is now a stockholder?

A. I think both were stockholders at the same time.

Q. Was she a stockholder before her husband's death in her own right?

A. I am only stating my understanding, but I understood both became stockholders in the corporation at the same time.

Q. Do you know whether or not she succeeeded to the shares her husband owned in his life time?

A. I do not know.

By Mr. LaFollette:

Q. Did you have any personal knowledge of the management of the business of M. Zier & Co. before its failure or before suit was brought in the Floyd County Circuit Court appointing a receiver?

A. None except in some legal business they had; as that I had been consulted by Mr. Urey the secretary, such as claims they had, liens.

Q. You are acquainted with the defendants here, Mr. Sacks and Mr. Watts?

A. Yes sir I have known Mr. Watts a number of years and I have known Mr. Sachs a short time.

Q. How long have you known Mr. Sachs?

A. I do not remember to have met Mr. Sachs until he came to New Albany after Mr. Watts had been to Indianapolis on the hearing on the 16th. I may have met him before but I have no recollection of it.

Q. How long have you known William W. Watts?

A. Probably ten years.

Q. Had he been practicing in the New Albany Circuit Court?

A. Not to my knowledge, but he had a collection business, a commercial law business in Louisville, and I had had some business with him in that way.

Q. Did you know personally of the institution of the proceedings of Ryerson & Son against M. Zier & Co.?

A. Yes sir, I appeared in that action.

Q. In what capacity did you appear?

A. I appeared as attorney for M. Zier & Co.

Q. You may state to the court whether or not you had had any conversation with W. W. Watts prior to the commencement of that action?

A. Yes sir I had.

Q. About how long before the action was instituted did you talk with Mr. Watts?

A. The morning it was filed.

Q. Just that morning?

A. Yes sir.

Q. What time in the day was it filed?

A. In the afternoon.

Q. You may state to the court, if you know, whether or not the petition that was filed in the Circuit Court by Ryerson & Son was prepared before you had the talk in the morning with Mr. Watts or whether it was prepared after the conversation.?

A. No it was prepared afterwards, I am sure; because Mr. Watts said he would prepare it and file it.

Mr. Miller:

Q. Did he say it was prepared afterwards?

A. I feel confident it was. I cannot say I saw it prepared.

Q. You may state to the court whether or not you had talked to Michael Zier, representing M. Zier & Co., before you had the conference with Mr. Watts about his financial condition?

A. Yes sir.

Q. How long before.

A. It had been several days; I do not remember just how long.

Q. You may state if you learned in your interview with him that he was insolvent?

A. I understood he was not able to pay everybody and was at least threatened with insolvency.

Q. And what was said by Mr. Watts in reference to it at the time you had the conference on that day?

A. I could not remember what was said as to his insolvency. Mr. Watts had this claim.

Q. How much was the claim, do you know?

A. About $15,000.

Q. Do you know then that there had been a recent payment on it?

A. No sir, I knew knowing of those payments to Ryerson.

Q. You did know about them? Had not Zier ever said anything to you about what payments he had made to Ryersson?

A. No sir, not to my recollection; I don't think I had ever heard of that.

Q. Was the proceedings instituted the result of an agreement or understanding between you and Mr. Watts, you representing M. Zier & Co. and he representing Ryerson & Co., that the proceedings should be instituted and that they should take the course that they did? Had that all been canvassed before the papers were filed?

A. Yes sir, I understood Mr. Watts would file a suit and apply for a receiver and that we would appear for Zier and consent to the receiver being appointed.

Q. Were you to do that without the issue of any process?

A. I do not think there was anything said about that. The process was issued; that was my understanding.

Q. There was not any ten days' time taken?

A. No sir, it was issued and served and appearance entered at the same time.

Q. So that the proceeding was instituted and apearance entered to it and action taken on it by the court the same day?

A. The same day.

Q. And that had been agreed upon in the morning when the statement had been made by Mr. Watts that he would prepare the petition?

A. Yes sir; we agreed to consent that the receiver should be appointed.

Q. Had you at that time a list of the creditors of M. Zier & Co.?

A. I had not.

Q. Do you know whether or not Mr. Watts had?

A. No sir, I don't know whether he did; I don't think he did.

Q. You may state whether or not you had any talk with the judge of the court prior to the filing of the petition?

A. I do not know that I did; I may have said a word that I would have some proceedings in his court; that is the rule we had there; the court was not in session.

Q. It was during term time?

A. No sir, the receiver was appointed in vacation, and that is the reason I sent word to the judge or telephoned that

there would be some proceedings taken in his court. I am sure I did not say what it was.

Q. It was during vacation that the action was taken?

A. Yes, sir.

Q. Had you talked with Mr. Watts about having the Trust Company appointed receiver?

A. Yes sir, I think I made that suggestion myself; I was interested in the Trust Company and naturally would.

Q. Had you known at that time about the payments that had been made to your firm by M. Zier and Company for Minnie Zier?

A. Yes sir I knew of that payment.

Q. Did you talk with Mr. Watts about that?

A. No sir.

Q. Do you know whether or not by anything he stated to you, whether he knew of the payments that had been to Minnie Zier by the Company?

A. No sir, I don't there was anything said about it in any conversation we had.

By the Court:

Q. You don't think, do you know?

A. That is my recollection, that there was nothing said about Minnie Zier at all in our conversation.

Q. The payment had just been made? that day or a day or two before?

A. Yes sir.

Q. Did he come there to consult you about the receivership about placing the company in the hands of a receiver?

A. No sir; the agent of Ryerson was with Mr. Watts; they had determined on the receivership as I understood it before I saw them or that some proceedings had to be taken.

Q. Did you know at the time or times that these payments were made, the manner in which the entries were made on the books of M. Zier & Co. as to how the money was taken from the concern?

A. No sir, I had never seen the books of M. Zier & Co. I did not know anything about how the payments were made.

Q. Did the bookkeeper of the concern ever consult you about the method of making entries in their books?

A. The day the receiver was appointed, those entries were made on that day and I knew the entry on the journal of the payment of this money; it was paid some days before that; I knew of that payment.

Q. Do you mean the entry that was made for the whole $9600?

A. For the whole $9600.

Q. That entry was made immediately preceding the appointment of the receiver in the Circuit Court about that day or the day before?

A. No sir; it was made the day the receiver was appointed. I think the day the receiver was appointed.

Q. Did you learn then when that entry was made of the $9600, as to how the entries had been made on the books from time to time as the moneys were paid each week?

A. I am not positive that I saw that entry; I learned if my recollection is right that that money had been charged to Mr. Zier as treasurer, that there was an account on the ledger, M. Zier, treasurer, and that this money as it had been paid over to him had been charged each time had been charged to M. Zier, treasurer.

Q. Did you learn then that it had been entered on the books as a charge to the pay roll, that it appeared that it was a pay roll charge?

A. No sir; I never knew that until Mr. Connor showed me the checks on Sunday.

Q. Since he got possession of the books?

A. Yes sir.

Q. You never knew it before?

A. I never knew it until that day.

Q. Did you know or have you learned how the entries came to be made in the books showing the $1,000 of this amount each week was paid to Minnie Zier when it had been originally charged up to the payroll?

A. I do not know anything about that?

Mr. Miller: I want to object to that.

The Court: He has answered that he don't know anything about it.

Mr. Miller: I know that, but he is taking up time; he certainly don't expect to prove that our client had any knowledge of the manner of bookkeeping of M. Zier & Company. He is doing this for some other purpose. I do not object to the purpose, only that he is taking our time in doing it.

The Court: I think myself that these matters are competent; it is hardly necessary for me to tell the reason why just now. I will say, however, that the question, as I understand it, for this court to try is this: There is no question that the receiver of this court went down and took possession of this property and took it away from the possession of the receiver of this court. This court holds that there is no question that that is illegal, and the question is what connection had these defendants with that proceeding. Now I propose to allow the district attorney to show what kind of a proceeding that was; the circumstances surrounding it and any citation or any transaction which might account for this marvelous effort on the part of the people to retain possession of the books of this company after the receiver of this court had made such an energetic effort to get hold of them.

Mr. Miller: In other words, the Court will allow as against these parties, without any statement by the district attorney that he expects to connect them with it, these matters to be put in as evidence against Mr. Sachs, for instance, the manner in which the books of this concern were kept, and what Mr. Jewett knew about that fact, a month or two months before Mr. Sachs ever had any connection with it.

The Court: It may be a month or so before Mr. Sachs had anything to do with it, but Mr. Watts had to do with it all the time. Mr. Watts brought the suit. He was the adviser of the Trust Company who had charge of the books when these interlineations appear to have been made, and the evidence I think is competent.

These defendants when they come to present their case and claim that they acted innocently in this entire transaction—I am going to find out if I can whether they have.

Court here adjourned until to-morrow morning at nine o'clock.

TUESDAY, MARCH 10th, 1903.

MORNING SESSION.

The court met at nine o'clock. Present the same as on yesterday.

The direct examination of the witness, Henry E. Jewett, was resumed as follows, questions by Mr. LaFollette:

Q. You said that you didn't know about how the entries were made in the books of M. Zier & Company as to the method of payments to Minnie Zier, from the first entry of its appearing as a payroll?

A. No, I know nothing about that. I don't believe I ever saw the original entry.

Q. You have seen it since then?

A. No sir.

Q. Haven't you seen the books since Conner got possession of them?

A. No.

Q. You have never seen the entry—the original entry?

A. I don't remember of seeing the original. My impression is I did not.

Q. Were the checks that were drawn by M. Zier & Company paid through the trust company or through the bank?

A. Through the bank.

Q. You had nothing to do with that?

A. Not before the receivership. We had nothing to do with M. Zier & Company's affairs before the receivership.

Q. Well, did you know, prior to the institution of the proceedings by Ryerson & Son that the payments were

being made by M. Zier & Company to Minnie Zier, of $9,000, and to Ryerson & Son, of $3,100.

A. I didn't know about the payment to Ryerson. I knew that payments had been made to Minnie Zier.

Q. You may tell the Court how the payments were, handled, they being made each week to you of $1,000, or to your firm—did you deposit that money each week or remit it?

A. They were not paid to our firm each week. The money was paid to us practically all at one time; possibly on two days; I haven't got the dates, but just before the payment to Minnie Zier. The money was brought to us altogether.

Q. Well, did you know what Mr. Zier did with the one thousand dollars that he retained each week?

A. No, I did not.

Q. It was not paid to you in weekly payments, then?

A. No.

By the Court:

Q. You say it was paid to you in one or two payments?

A. Yes, sir, about all the same time.

Q. Well, which one or two payments?

A. Two payments.

Q. How was it divided?

A. Well, it was all paid except $2,100, I think the first day; and the next day, or the day after, Mr. Zier brought the other $2,100; that is the way I remember it.

By Mr. LaFollette:

Q. And how soon after it was paid to you was it remitted, if it was remitted at all by your firm, or was it deposited at New Albany?

A. It was deposited at New Albany in our account in bank, like any other account that was received, and my brother took the check to Mrs. Zier and paid it.

By the Court:

Q. Where?

A. Chicago.

By Mr. LaFollette:

Q. Was the check delivered, as you understand it, in Chicago?

A. That is my understanding.

Q. You understand that from the fact that he went to Chicago about the time that it was taken out of bank?

A. I was not managing that part of it; I really know that—

Q. (Interrupting.) How long was that before the institution of the proceedings in the State Court by Ryerson & Son?

A. It was just a few days. Probably the 26th or 27th of December.

Q. You may state if Ryerson & Son or their agent or any one representing that company came to New Albany immediately after that payment had been made up in Chicago to the agent of Minnie Zier?

A. The agent of Ryerson & Son, Mr. Jackson, came on the 30th of December.

Q. When he came did Mr. Watts come with him?

A. Yes sir they came, but I saw them before they came to New Albany, as Mr. Watts telephoned me Mr. Jackson was at his office and called me to Louisville; that is where he asked me about appearing to Mr. Zier in the receivership.

Q. When you first met them it was in Louisville?

A. Yes sir.

Q. In response to a telephone communication from Mr. Watts?

A. Yes sir.

By the Court:

Q. When was that?

A. That was the 30th; the day the receivership was filed.

By Mr. LaFollette:

Q. That was the same day it was filed that you went over to Louisville in the morning was it?

A. In the morning.

Q. Of that day?

A. Yes.

Q. In that conversation was there anything said about this payment that had recently been made by Zier & Company to Minnie Zier?

A. No sir, there was nothing said about that.

Q. Was there anything said about payments having recently been made to Ryerson & Son of $3100?

A. Not to my recollection; I would say there was not; what I was called over for I understood was to see whether I would appear for Zier in a receivership suit?

Q. Was the form of suit talked about between you and Mr. Watts at that time? Did you talk about any other kind of proceeding than the one you brought?

A. No, my understanding was that the determination had been arrived at to bring a suit for a receiver in the state court.

Q. What was said that induced you to reach that inference that it had been decided on?

A. Well that is hard to say. I just know there was nothing else said.

Q. Wasn't there any talk had between you and Mr. Watts about the probabilities of there being bankruptcy proceedings?

A. Not at that time.

Q. Well was there then at any time?

A. I don't know that there was unless it was after this receivership here.

Q. I mean before then?

A. No, I had no discussion with Mr. Watts about the bankruptcy matter. I want to say in explanation of my not discussing the matter further with him, you understand my brother had seen the Ryersons and I knew that, and I did not consider it any part of my duty to do so.

Q. So the matter of the kind of suit had been talked about before, you think?

A. I supposed it had. Yes sir.

By the Court:

Q. Well when you agreed to appear for M. Zier & Company, and have the receiver appointed, you knew then that your brother had been to Chicago to deliver to the agent of Minnie Zier this $9,000, didn't you?

A. Yes, sir.

Q. He was absent on that mission, was he not?

A. He had been at Chicago, and I don't think was in Chicago at that date.

Q. He had not yet returned to New Albany?

A. No, he had not.

By Mr. LaFolette:

Q. Was there anything said by Mr. Jackson, the agent of Ryerson & Son, about his conference with Mr. Jewett, your brother?

A. He spoke of meeting him there.

Q. Did he say anything about the fact that there was to be a suit brought as the result of that conference, and that he had learned from your brother, Colonel Jewett, that you both would appear for M. Zier & Company?

A. That was my understanding, that he knew that when he came that the property was to be put in the hands of a receiver of the State Court.

Q. Well, now wasn't there at that meeting some conversation between you, as lawyers, about the possibility or probability of some other creditors coming in and instituting bankruptcy proceedings, if you commenced this proceeding?

A. I don't know that there was; if there was I don't remember it; I wasn't there only a short time; as I say, I had not made the arrangement.

Q. Do you know why you went over there then?

A. I was informed Mr. Jackson was there?

Q. I know, but you had talked over the telephone you say? that is you had a communication from Mr. Watts by phone to you?

A. Yes.

Q. Now if it had only been a matter of asking you whether you would appear for M. Zier & Company that could have been answered over the phone couldn't?

A. That could have been answered over the phone.

Q. Do you know why it was not?

A. No, except that Mr. Watts wanted to talk about this receivership matter.

Q. Well if as you say the matter had been determined before communicating with you, about the form of the suit, and you didn't talk about that because it had been so determined, and he only wanted to know whether you would appear for Zier, and that could he asked over the phone, now can you call to mind any reason why you went over to Louisville?

No, I went to Louisville because Mr. Watts called me up and said Mr. Jackson was there, and I understood that the receivership suit was to be brought; Mr. Watts talked with me about the form of the complaint, form of the proceeding under our statute for a receiver; and talked to me about who would be the receiver.

Q. Now as fully as you can you may relate all that was said by Mr. Watts to you, and you to him, in that conversation just as fully as you can, Mr. Jewett?

A. Well I could't undertake to repeat what was said.

By the Court:

Q. Well you must undertake to tell what was said.

A. I will do it as fully as I can. I was trying to go over in my mind what had occurred. The telephone message came tolerably soon after I got to my office at nine o'clock, and my recollection is Mr. Watts told me over the telephone —whoever telephoned, I don't know whether it was him or someone in his office; but my recollection is it was Mr. Watts; I remember his voice—that Mr. Jackson was there, and I told him I would come over, and I went. I got there probably in an hour, and Mr. Watts and Mr. Jackson were there, and he introduced me to Mr. Jackson, and Mr. Jackson spoke of meeting my brother in Chicago, he having been at the office of Ryerson & Son; and Mr. Jackson talked something about the liabilities and assets of the concern. Do you want me to tell what was said about that?

By Mr. LaFollette:

Q. Yes, what was said about that?

A. My recollection is that they had statements or copies of statements that Mr. Zier had given, and it showed his estimate of the assets at something over $50,000, and the liabilities about $65,000; my recollection of that statement was that the assets were either 55 or 58, thousand dollars; I didn't prepare that or work on it, and I don't remember accurately about it, and Mr. Jackson—

The Court: Speak louder.

The witness continuing: I was trying to remember whether he talked about the state receivership or not.

By the Court:

Q. Is he a lawyer?

A. I thought at the time he was, and I am not sure, Your Honor, whether he is or not; he is employed by these people, and I am not sure but he is a lawyer; but I think he has charge of their collections probably; and Mr. Watts asked me whether we had a statute about appointing a receiver for an insolvent corporation, and asked me about the form of the complaint and some details of that sort, and he asked me about who would be the receiver, who would be a proper party, and I suggested the New Albany Trust Company, and stated that I was interested in it, and he asked me about representing the receiver, and I told him that would be all right; that was the rule of the trust company.

By Mr. LaFollette:

Q. That is he desired to be the attorney for the receiver?

A. After it was appointed, Yes sir.

Q. He was also the attorney for Ryerson & Son, wasn't he?

A. Yes, he had their claim in his hands at that time as I understood.

Q. Did you and he talk together about the propriety of the attorney for the principal claimant, or at least one of them, being also the attorney for the receiver? Was that subject talked about?

A. No, nothing was said about it.

Q. So that matter wasn't mentioned at all, you think, about the propriety of it?

A. No; no, I am not sure of that.

Q. Did you talk with him when he asked you about the statute of Indiana in regard to the appointment of a receiver for insolvent corporations, and in a general way about insolvency, did you mention the fact that the statute provided for assignments, and did he say anything about that?

A. Well, if he did I don't remember it.

Q. Don't you remember that he said that what they wanted to do was to have a proceeding that would avoid if possible subsequent bankruptcy proceedings?

A. No, he didn't say that to me.

By the Court:

Q. What was the answer?

A. No, he said nothing of that kind to me.

By Mr. LaFollette:

Q. And you said nothing about assignments, about that statute, when he talked to you about the Indiana statute?

A. No, I understood him to say that they had agreed about the receivership.

By the Court:

Q. That who had agreed?

A. That my brother and the attorneys for Ryerson at Chicago.

Q. Was there anything said there about the steps that were to be taken following the appointment of a receiver?

A. Yes, we talked about operating the plant.

By Mr. LaFollette:

Q. You may state pretty fully what was said about that?

A. Well, the details about the operation were not gone into; it was merely stated that in the petition and in the order they would ask the court for an order to continue the operation of the plant.

Q. Had you talked with Judge Utz about it before going over to Louisville?

A. No, I never mentioned it to Judge Utz in any way.

Q. Then if the agreement had been made as you indicate it was, that a receiver should be prayed for, while your brother was in Chicago, in conference with Ryerson & Son, it is hardly likely that you would have been called over to say that you would appear? That also had been agreed on before.

A. I did not mean to indicate that it was whether I would agree to appear or not; it was about entering my appearance and having the suit filed.

Q. Really, it was a conference about methods to be followed?

A. About arranging for the suit.

By The Court:

Q. To carry out the agreement that was made in Chicago?

A. That was my understanding of it.

Q. Where did you get your information about it?

A. From my brother.

Q. Before he went to Chicago?

A. No, he informed me while he was in Chicago.

Q. By letter?

A. No he called me up over the telephone and told me he had seen Ryerson.

Q. Where was he when he called you by phone?

A. In Chicago.

Q. So you had a conference with him from New Albany to Chicago as to the plans that were adopted, and that you were to appear for M. Zier & Company and that there was to be a receivership?

A. And consent to a receivership.

Q. Had you in the meantime talked to Michael Zier about it, or did you at any time talk to him?

A. I talked to him after I had this message from my brother; I hadn't talked to Mr. Zier a great deal; in fact I hadn't had charge of a great deal of that business in our office up to this time when my brother went away, but when I heard from my brother I called Mr. Zier in and told him that Ryerson & Son were going to file an application for a receiver.

Q. What did he say about it?

A. He was satisfied, agreed that that was the best arrangement.

Q. He was leaving that to you? Did you tell him that your company would probably be the receiver?

A. I don't know that I did. My impression is I did not, because that was not a matter that Mr. Zier was concerned about.

Q. Did you learn from him that he had already talked to Col. Jewett about it before his going to Chicago, and that he was pretty fully advised about what was going to be done?

A. I knew that he had authorized my brother to make arrangements at Chicago with Ryerson to settle this business if he could; I knew that in a general way only by seeing him in the office.

Q. After the suit was filed did you have any active connection with it in appearing for Zier & Company as to the proceedings in court?

A. You mean after the first day?

Q. After this conversation you had at Louisville?

A. I appeared when the suit was filed.

Q. Following that did you have active connection with the various steps that were taken?

A. Not with the suit; at the time the creditors met I took no part in that except on behalf of the trust company; I did make some suggestions.

Q. Do you know how it came about that the creditors' meeting was had?

A. That was Mr. Watts's plan to have a creditors' meeting; he made that suggestion.

Q. When was that suggestion made and where?

A. My recollection is it was made at the time the order was entered or talked about.

Q. In court?

A. Yes or right soon afterward.

Q. Well was there any statement made to you or in your presence about why they should have a creditors' meeting? What the purpose if it was?

A. It was to have the advice of the creditors' in administering the estate.

Q. Was there anything said about getting them inot court by that method?

A. Not to me.

Q. Was there anything said about calling them in and having them to agree that it should proceed in a general way or the plan of bankruptcy proceedings?

A. No I never heard that statement made until it was made in court up here; that was the first time I ever heard a suggestion of that kind made; on the hearing here?

Q. Didn't you hear it made at the creditors' meeting down at New Albany?

A. No I have no recollection of that.

By the Court:

Q. You heard the statement made down in chambers?

A. Down in chambers?

Q. Yes, you heard the statement made by the attorney?

A. Who was here at the meeting?

Q. Yes.

A. I heard Mr. Watts say at that hearing, yes, that the plan was on those lines.

Q. You heard Mr. Watts say that down in the chambers of this Court.

A. Yes, Your Honor, I heard what was said here.

Q. That that was his plan?

A. That was his plan; it was a plan on those lines, something of that kind; I couldn't repeat the statement of the words.

By Mr. LaFollette:

Q. At the time of the creditors' meeting I believe you said you were present and made some suggestions?

A. Yes sir.

Q. Was Mr. Watts present?

A. Mr. Watts was present.

Q. What subjects were talked of there at the creditors' meeting?

A. Well there were a number of controversies over unfinished contracts, some persons claiming that work had been paid for and not delivered and that they were entitled to have the boilers and the machinery delivered because they had paid for them; and there was some discussion as to whether it would be profitable to finish unfinished contracts and matters of that kind, were discussed.

Q. Was there anything said about payments that had been made? Was there anything said about the payments that had been made to Minnie Zier?

A. No, not that I remember of.

Q. Was there anything said about the $3,100 that was paid to Ryerson?

A. If it was mentioned I did'nt hear it.

By the Court:

Q. Was your brother in the creditors' meeting?

A. Yes, he was there.

Q. Did he say anything about having taken $9,000 to Chicago?

A. No sir?

Q. Did he tell about the $600 he received?

A. No.

Q. And Watts said nothing about the $3,100 that had been received by Ryerson & Son?

A. No sir.

Q. That was a meeting to advise with the creditors.

A. Yes it was called for that purpose as I understood it.

By Mr. LaFollette:

Q. And was court in session?

A. When the term was going on.

Q. That was during the term?

A. Yes sir.

Q. Was Judge Utz present?

A. Oh yes, he was presiding.

Q. Presiding at the creditor's meeting?

A. Yes.

Q. Well was it the court presiding?

A. Yes, it was the court presiding; there was an order entered that day for the operation of the plant; a petition filed.

Q. Well, do you know anything about the form of notice that went out to the creditors?

A. My recollection is it was a letter.

Q. It was a letter to them that it was to be a creditors' meeting?

A. Possibly it was.

Q. To consider the business of M. Zier & Company? There wasn't any notice to them that they were to come and be convened at a session of court, to go up against the Floyd circuit?

A. No, it was stated, I presume, that it was to be held in court. There was no summons or anything of that sort.

Q. Judge Utz presided, and the matter was discussed in open court?

A. Yes, with a large number of creditors.

Q. Did the creditors discuss the questions to the court?

A. Two or three creditors made suggestions to the court, I wouldn't be able to say just how many.

Q. And how soon after that, if you know, was the order made that the Court entered that day? Was it immediately done there?

A. That is my understanding.

Q. Did any of you, as attorneys, supervise the form of the order, either you or your brother or Watts?

A. Mr. Watts was preparing the order.

Q. During the meeting?

A. During the meeting; yes, sir.

Q. He prepared it there in the court room?

A. I wouldn't say he prepared all of it; he was working on it; I saw him there.

Q. Was that entry that he prepared submitted to the creditors at that meeting so that they might know what kind of an order was going to be spread upon the record?

A. It was submitted to some of them; I couldn't say that it was submitted to all. My recollection is that it was not read publicly while I was there.

Q. You think it was not publicly read to the meeting?

A. I don't think it was; at least I didn't hear it; I was out of the room part of the time.

Q. How long did the meeting continue?

A. Oh, I think most of the day.

Q. Did you have an adjournment and then go back again in an afternoon session?

A. I don't remember about that, but we were there a good while.

Q. Following that meeting, then—

By the Court:

Q. Before you leave that meeting, was there anything said in that meeting in the presence of these creditors about enjoining the creditors from prosecuting their suits in any other court?

A. That was in the entry as I understood it.

Q. I didn't ask what was in the entry; I asked was there anything said about that in that meeting?

A. I heard Mr. Stotsenburg say that that ought to go in the entry, but that wasn't said to the meeting generally.

Q. Then it was not stated to the creditors?

A. I didn't hear it stated.

Q. Was any such matter as that discussed in the creditors' meeting when the creditors were present—

A. I heard nothing of that sort.

Q. (Continuing) That there should be included in this entry an order or injunction of that sort?

A. Not while I was there.

By Mr. LaFollette:

Q. Now what further connection did you have with the matter as it proceeded after that meeting, and what do you personally know about what Mr. Watts did in that same connection?

A. Well I didn't have a great deal more to do with it except as an officer of the trust company, and not a great deal with that; I had something to do with claims where there was some trouble about them; I had some trouble with claims that were in dispute, and went to Louisville once with Mr. Zier to see about men who were getting work done, where they were not satisfied with work that was being done.

Q. Mr. Watts was the attorney for your company?

A. Yes sir.

Q. Did he advise with you from time to time as to the proceeding?

A. He advised with the secretary through the telephone, and came over to see him; at least I saw him over in the office, and my recollection is some of these matters that were in dispute were sent to him to be adjusted; I had no further active participation in it until he got the order to come up here and present the question of jurisdiction to this court.

Q. What was the date of the creditors' meeting that you had spoken of?

A. My recollection is the 24th of January.

Q. How soon after that was it, if you know, that a petition was filed in the bankrupt court?

A. I heard of that on Thursday before the Floyd circuit court adjourned; the Floyd circuit court adjourned on the 14th; on the Thursday preceding I heard this petition had been filed.

Q. Now after having heard, that on the Thursday before the adjournment of court how soon did you see Mr. Watts?

A. I telephoned Mr. Watts the fact that that petition had been filed that day.

Q. On Thursday?

A. On Thursday.

The Court: What petition had been filed?

Mr. LaFollette: The petition in bankruptcy.

The witness: And the next day Mr. Watts came over, is my recollection.

Q. On Friday?

A. On Friday.

Q. Now was there anything done on Friday in court about the proceedings?

A. I don't remember that anything was done in the court; it was then that he proposed this plan of filing a petition in the Floyd Circuit Court to procure an order to present this question as it was presented up here.

Q. Was that petition filed that day, on Friday as you understand it?

A. Not on Friday; I am sure it was not.

Q. When was it filed?

A. It was filed on Saturday.

Q. The following day?

A. The following day.

Q. And the order taken of the Court that you proceed to Indianapolis to present the jurisdictional question; was it put in that form as you understand it?

A. I have never read the order; as I remember it was to proceed here to present the question of the clash of jurisdiction; I think that is my recollection of it.

Q. That was done under the advice of Mr. Watts the attorney for the receiver?

A. Mr. Watts prepared the paper.

By the Court:

Q. The question is whether or not it was done under his advice.

A. Oh yes it was his idea; it was his suggestion.

By Mr. LaFollette.

Q. Do you know if there had been any other papers filed in Court by Mr. Connor, the receiver, up to that time, to Saturday?

A. I knew of the filing of Mr. Connor's intervening petition, I think it was.

Q. That was filed on Saturday too, wasn't it?

Q. That was filed—yes that was filed before Mr. Watts's petition was filed.

Q. Did yon talk with Mr. Watts about that?

A. I handed it to him when he came in; his attention was called to it when he came into court.

Q. After you handed him that petition what did he say to you, if anything, about it, and about what steps would be taken in regard to it?

A. He didn't talk to me about that; he took the petition and immediately filed his petition, as I understood it. After that he and Mr. Hester had some argument before Judge Utz about it. I took no part in that. I left the court room immediately afterward.

By the Court:

Q. Mr. Connor's petition that you speak about, that was the petition of this receiver to the Floyd Circuit Court showing his authority and his appointment by this court and asking that court to order its receiver to turn the property over to him?

A. That is my understanding: I didn't read it except at the first page.

Mr. Miller: Wouldn't it be better to have him read the petition?

Mr. LaFollette: I am not asking to prove the contents of the petition; that will go in evidence.

The Court: In the history of the transaction, you may show about the filing of the petition and what was done about it. Of course, as to the contents of the petition, that cannot be proved by the evidence of this witness.

The witness: I just handed it to Mr. Watts, and told him it was a petition filed by Mr. Hester for Mr. Connor, and he took it and went on to another desk; he didn't talk with me about it.

By Mr. LaFollette:

Q. What I want to know is, if you know what Mr. Watts said there about it to the Court, about this petition and what should be done with it, the petition of Connor, receiver?

A. All I heard Mr. Watts say was something about the petition not being, as I understood it, a full appearance by Mr. Connor.

By the Court:

Q. By whom.

A. By Mr. Connor; there was something of that kind as I recollect it. That was addressed to the court, you understand, not to me.

Q. There was a technical objection?

A. Of some sort.

By Mr. LaFollette:

Q. Did you hear anything further said about it other than that?

A. Not about that petition.

Q. And on Saturday the Court adjourned?

A. Yes sir, that was the last day of the term. It adjourned.

Q. Did you hear anything said in the Court in the presence of Mr. Watts about the disposition of the petition of Connor, receiver, about what entry should be made concerning it?

A. No, I heard nothing about it.

Q. Was it on the Monday following that you and Mr. Watts came to Indianapolis?

A. Yes sir.

Q. Was there anything said on that Saturday before your coming that you would come here on Monday,—or on Friday probably, before?

A. Yes, it was understood that we were coming.

By the Court:

Q. The question is whether there was anything said?

A. Well I must have been told that we were coming, because the order was made by Mr. LaFollette.

By Mr. LaFollette:

Q. It is a fact, isn't it, Mr. Jewett, that there was telephone communication to, the clerk of the district court at Indianapolis that you would come?

A. Yes.

Q. Was that from your office?

A. That was from my office.

Q. Was that conversation held by Mr. Watts?

A. By Mr. Watts with someone here.

Q. What was the statement made, did you hear that, by Mr. Watts?

A. I think I did; he stated he wanted to come to Indianapolis to present the question of the jurisdiction of the courts.

By the Court:

Q. Did he tell that to you, or do you say he said that over the telephone?

A. I wouldn't be positive about that.

Q. I want you to be positive about it. I want you to tell the court which it was.

A. I heard him go to the telephone, and he either said that over the telephone, or said it to me just at that time.

Q. You are not certain which?

A. I am not certain about that.

By Mr. LaFollette:

Q. Are you certain that you heard the telephone conversation that Mr. Watts held?

A. I wouldn't be certain I heard all of the conversation, or just what was said; I saw Mr. Watts go to the telephone, knew he was calling Indianapolis; the telephone is in the room in the office where everyone comes in and out, and there were other people coming in and out all the time; I wouldn't be positive about that.

Q. But as the result of that you did come to Indianapolis?

A. Yes.

Q. And you were here on Monday and Tuesday?

A. Monday and Tuesday.

Q. The question of jurisdiction of the courts was argued to this court?

A. Argued to this court all Monday afternoon.

Q. And any part of Tuesday?

A. Yes, Tuesday morning.

Q. Was Mr. Hester here representing the petitioning creditors?

A. Hester and some other gentleman, I don't remember his name, of Chicago.

Q. And after that argument you reached a conclusion about the matter, did you?

A. Yes sir.

Q. And that was that you were to turn over the property to Mr. Connor, receiver?

A. Yes sir.

Q. You speaking for the receiver, you representing the trust company, and Mr. Watts, your attorney also?

A. Yes.

Q. Before leaving here it was stated both by you and Mr. Watts that you would return to New Albany and turn the property over to Mr. Connor, the receiver appointed by this court?

A. He stated that distinctly, and so did I.

Q. What time did you reach New Albany on your return?

A. About seven o'clock of Tuesday night.

Q. Do you know where Mr. Watts went on Tuesday night?

A. No, I left him at 14th street, is my recollection.

Q. At Louisville?

A. Yes, we go to 14th street and come back across the bridge.

Q. He didn't go to New Albany that night?

A. Not so far as I know.

Q. When did you next see him?

A. I think it was the next afternoon.

Q. That would be Wednesday?

A. Wednesday.

Q. Where?

A. He came in the office; that is my understanding.

Q. Your office at New Albany?

A. Yes sir, he came in there that afternoon; I am not very clear about that, whether it was that day or Thursday; he did come in the office and asked me to telephone to Mr. Kelso.

By the court:

Q. What did he say?

A. He asked me how late Mr. Kelso stayed in his office and I told him he left between four and five o'clock, and he said—he asked me to call him up and ask him to wait until he and Mr. Sachs could get there.

Q. Now who was it asked you to do that?

A. Mr. Watts.

Q. William W. Watts, the defendant here.

A. Yes sir.

By Mr. LaFollette:

Q. Hadn't you seen Mr. Watts from the time you went home from Indianapolis until the time when he and Mr. Sachs came together to your office and asked you to call up Mr. Kelso?

A. Not to my recollection.

Q. Do you know whether there had been anything said about this matter in the court or to Judge Utz prior to that time?

A. No, Mr. Watts had told me that he was going to see Judge Utz with Mr. Sachs.

Q. When did he tell you that?

A. Going down on the train.

Q. That he was going to see Judge Utz with Mr. Sachs? Do you know how it came that he connected Mr. Sachs with the matter?

A. Yes sir, he explained that to me; he stated that he was going to bring Mr. Sachs to New Albany to see Judge Utz, and have Mr. Sachs talk to Judge Utz, and, as I understand it, justify the course he had taken in Judge Utz's eyes; justify himself with Judge Utz by having Mr. Sachs talk to Judge Utz.

Q. Did you know at that time as you came down from Indianapolis, that Judge Utz would disagree with the course you had taken?

A. I did not; I understood—

Q. (Interrupting) Well, I understood that he would agree with it.

Q. You made the statement up here that you would turn over the property, and Mr. Watts consented to that, and then as you went home Mr. Watts said that he would get Mr. Sachs, a lawyer from Louisville, to come over and talk with Judge Utz and satisfy him that the course you had taken was right? Is that the way it occurred?

A. No, don't understand me to say that he was to justify his giving up the property, but justify him about the proceedings he had taken about coming up here to present the question of jurisdiction. There was no question about justifying the turning over of the property.

Q. But that matter had been presented to the court before you came, as I understood?

A. Yes sir.

Q. If it had been presented to Judge Utz, and he had made an order that you should come, what occasion would there be on your way home for getting a lawyer to come over and having him justify it?

A. I don't say I saw any occasion for it. Mr. Watts made an explanation to me of what he intended to do about squaring himself with Judge Utz to show that he had not made a mistake.

By the Court:

Q. In what proceeding?

A. This petition, coming into your court and praying to raise this question of the clash of jurisdiction. Your Honor

will remember he entered a special, limited appearance, and I understood that Mr. Sachs was to explain to Judge Utz that that was a proper proceeding.

Q. That was the way you understood it?

A. Yes sir.

Q. What did Mr. Watts say to you about it?

A. He said he was going to bring Mr. Sachs to New Albany to explain to Judge Utz that he had taken the proper proceedings in this matter by coming up here into this court on Monday; that is what he said to me.

By Mr. LaFollette:

Q. Then on Wednesday afternoon, you think, they came to your office?

A. Yes, I wouldn't remember that, except as I say, Mr. Kelso said I telephoned him, and I have no doubt I did.

Q. You remember they came to your office?

A. On one occasion.

Q. Was there any conversation had there then about the proceedings that had been had here and at New Albany in the courts, or about any other proceedings that was to be had?

A. No, I didn't discuss that with them at all.

Q. Did they mention that to you?

A. No.

By the Court:

Q. Who do you mean by "They"?

A. Mr Sachs and Mr Watts.

Q. It was they who came to your office, and it was for them that you telephoned Mr. Kelso?

A. It was for them that I telephoned Mr. Kelso.

Q. What did you say to Mr Kelso?

A. Told him two gentlemen were coming around to see him.

Q. And to wait at his office?

A. To wait at his office.

By Mr. LaFollette:

Q. How soon after that did they leave your office?

A. They left immediately.

Q. Do you know what purpose they had in coming to your office? Was there anything occurred there that would give you that information?

A. I think Mr. Watts came in to ask me about one of those Louisville claims; goods that had been sold by Mr. Zier & Company to a firm in Louisville, and there was some question about the payment for them.

Q. Then you had some conversation with him about that claim?

A. That is my recollection about what he came in for.

Q. Had you ever known Mr. Sachs before then?

A. No.

Q. Were you introduced to him by M. Watts when he came in.

A. Yes, I was introduced to him.

Q. That was the first you knew of him.

A. Yes sir, I had met his brother before.

Q. Did you call to mind then that this was the same gentleman that Mr. Watts spoke about when you were on your way home from Indianapolis?

A. I assumed he was.

Q. Did you say anything about the matter of the proceedings in the M. Zier & Company case in bankruptcy?

A. Not at that time.

Q. You didn't talk about that at all?

A. There was no discussion as far as I can recollect.

Q. You didn't talk with Mr. Sachs about what his view was about your coming up here, whether he would justify Mr. Watts or not?

A. No, I didn't talk about that; he did at another time when I was present, talk about that, but I have no recollection of anything being said then.

Q. Did you know at that time that there was being some steps taken before Judge Utz to have you discharged or removed as the receiver—that is the New Albany Trust Company?

A. I did not.

Q. Had you learned up to that time that Judge Utz was disapproving the course that had been taken by you?

A. No, I talked to Judge Utz in the morning about it, and while he had not expressed any approval of it, he did not express any disapproval.

Q. That was Wednesday morning?

A. Yes sir; he came in the office.

By the Court:

Q. You say you told him then what you had agreed to do?

A. Yes, I talked with him about it.

Q. And told him you had offered to turn over the property to the receiver of this Court?

A. Yes sir.

Q. And he made no objection at that time?

A. Not as I understood it. He certainly didn't say we should not.

By Mr. LaFollette:

Q. That was at your office on Wednesday morning? Was anyone with him at that time when he came into your office?

A. No.

Q. Then following that, after you had had that talk that morning with Judge Utz, and then in the morning you met Mr. Watts and Mr. Sachs, as you have stated, when after that did you learn that there was some proceeding being taken to prevent you from turning over the property or to take some other methods of getting the property?

A. I learned the next day when I went to Judge Utz's office that he didn't want to turn over the property, when we tendered our resignation and stated that we had agreed to turn it over in writing and had filed that paper.

Q. Was there anybody else present in Judge Utz's office at that time?

A. Yes, Mr. Watts and Mr. Sachs, and I am under the impression Mr. Kelso was there and Judge Utz.

Q. That was on Thursday?

A. That was on Thursday morning.

By the Court:

Q. And it was the evening before that that you had telephoned Kelso that two gentlemen would come over to see him?

A. I suppose it was. I say I don't remember that, except from Mr. Kelso's statement about it.

By Mr. LaFollette.

Q. Now you may state what was said there by Mr. Watts or by Mr. Sachs when you tendered your resignation, and stated that you were turning over the property to Mr. Connor, receiver?

A. Mr. Watts said he had advised the company while here to turn the property over; that is while in the court here; and either I or Mr. Watts read a paper, my recollection is I read a paper, and Mr. Sachs remarked that our giving up the property was contempt of the Floyd Circuit Court, and the paper ought not to be allowed to be filed.

Q. Mr. Sachs said that?

A. Said that, and Judge Utz said the paper should be filed. I stated in connection with what was said that I had stated to this court that the property would be turned over, and it would be turned over, and Judge said something about he would not expect me to break my faith or something of that sort, but he said the property must not be turned over just at that time; I understood it was until we had made some showing to his court of our proceedings.

By the Court:

Q. (Interrupting.) State what he said?

A. I said I couldn't state the exact language.

Q. I mean not what you understood him to mean, but what you understood him to state?

A. He stated that the property should not be turned over until we had made a further report, or a report, as I understood.

Q. Were Watts and Sachs with Judge Utz when you went in?

A. That is my recollection that they were there.

By Mr. LaFollette:

Q. At that time, Mr. Jewett, do you remember whether Mr. Watts said anything about your not turning it over?

A. No, if he did say anything about not turning it over, I didn't hear it.

Q. But Mr. Sachs said you should not turn it over?

A. No, Mr. Sachs didn't say that; he said the filing of that paper was a contempt of the Court, and it ought not to be allowed to be filed.

Q. Did he make any explanation of that other than to say it ought not to be allowed to be filed? What was there in the paper that he referred to, if you know?

A. Why our statement that we intended to turn over the property.

Q. Was there anything said at that time by Judge Utz in the presence of Mr. Watts and Mr. Sachs about that if there was not—if they didn't find any law to authorize the holding of the property that he would find Indiana law to hold it? Do you remember any expression of that kind?

A. No, I don't remember about that; there was some discussion about the law, but I don't remember what was said.

Q. How long were you there before the Judge? The court, I believe, was not in session?

A. No, the court was not in session. I was there about twenty minutes, I should say.

Q. What was said by you that probably the property had already been turned over, that Mr. Connor was at your office when you came away?

A. I don't remember to have said that at that time, although I may have done it. Mr. Connor had been at the office, and we had offered to turn it over to him, and I may have said it at that time that it probably had been turned over; I am sure I said—that I spoke of Mr. Connor having been there at our office.

Q. Do you know whether or not there had been any papers filed before the court for the purpose of preventing the turning over of the property at the time you were over there before Judge Utz?

A. I did not.

Q. Did you know of there being a paper or a plea of some kind filed by D. A. Sachs on behalf of the United States Tube Company?

A. I do not.

Q. You did not know that there was a paper filed in which the New Albany Trust Company was being charged with having wrongfully and unlawfully, and without leave of the Floyd Circuit Court, turned over and surrendered the possession of the M. Zier & Company boiler plant, etc., to Frederick D. Connor, who was acting as receiver in bankruptcy and so forth.

A. I didn't know anything of that paper until the trust company was cited for contempt of the Floyd Circuit Court, and then I was informed of that paper.

Q. And do you call to mind now when you heard of that? When you got that notice?

A. I think it was recited in the citation to us.

Q. But when it was is what I want to know.

A. I couldn't say whether that was Thursday or Friday.

Q. Did you learn in the meantime that an entry had been made removing the trust company as receiver and appointing Mr. Kelso?

A. Not until I heard of this citation for contempt of the Floyd circuit court; that is the first I learned of any of that proceeding.

Q. Had there been any talk of that with you or in your presence?

A. There never was at any time.

Q. When, after you did learn of that, and after you had been citied for contempt, did you have any conversation with Mr. Watts about it?

A. No, I never talked with Mr. Watts after the time I filed the resignation up to the time that I testified to when I went to Louisville to tell him that my brother could not appear for him in this proceeding; that was on Monday; the 23d, which was a legal holiday, I went to Louisville that day, and gave him that message.

Q. What I particularly had reference to was whether or not Mr. Watts talked to you or you to him about the matter of being in contempt, as charged, of the Floyd circuit court? Whether he talked to you about that or had any conference with you about it?

A. No I didn't talk to him about that at all.

Q. Were you present before Judge Utz at the time the matter was talked about and also, suggested that proceedings be instituted against you and W. W. Watts also.

A. No sir, I heard nothing of that.

Q. You heard nothing of that?

A. I never was there after the time I filed the resignation.

The defendants did not cross-examine the witness.

Witness excused.

Edward Fitzpatrick, a witness called on behalf of the Government, being duly sworn, and examined by Mr. LaFollette:

Q. State your name?

A. Edward Fitzpatrick.

Q. Where do you live?

A. I live in New Albany.

Q. Are you acquainted with Charles L. and Henry Jewett?

A. Yes sir.

Q. Do you know where their office is in the city of New Albany?

A. Yes sir.

Q. Are you acquainted with D. A. Sachs and W. W. Watts?

A. Yes sir.

Q. Do you remember of having been in the office of Jewett and Jewett in New Albany during probably the last week in February last when Mr. Sachs and Mr. Watts came to their office?

A. I do.

Q. Can you state definitely when that was?

A. I could not state the date. I know it was on Wednesday because I am detailed to go to New Albany on Wednesday; I am employed in Louisville as a newspaper reporter; and I go to New Albany not to write news but to write gossip on Wednesday and on this Wednesday I called on Mr. Jewett to congratulate him on his recovery from a spell of sickness. I did not remain long, just a moment, and whilst I was there I saw Mr. Sachs and Mr. Watts and I looked at Mr. Sachs and said, "Hello Sachs, what are you doing over here." and He said, "I am just over here to help out my friend Watts and I passed out after talking to Mr. Jewett a moment.

Q. Did you hear any conversation between either of the Jewetts and either Watts or Sachs?

A. Oh no, I did not. I did not remain in the office but a moment.

Q. Was that statement you have related all that you heard while you were there?

A. That was all. There was something said about the weather and about New Albany people and I said something to Mr. Sachs about taking him and showing him the town, but further than that I recollect nothing else.

Q. Did you see them anywhere else while you were over there?

A. No sir; I did not meet them any place else and did not think about afterwards.

Charles L. Jewett, a witness called for the government, being duly sworn and examined by Mr. LaFollette:

Q. You may state your name to the court?

A. Charles L. Jewett.

Q. Where do you reside?

A. New Albany.

Q. You are a practicing lawyer?

A. Yes sir.

Q. A member of the firm of Jewett & Jewett?

A. Our firm name is C. L. and H. E. Jewett.

Q. You are acquainted with D. A. Sachs and William W. Watts, are you?

A. Yes sir.

Q. You knew of the company that was doing business at New Albany in the name of M. Zier & Co.?

A. Yes sir, we were their attorneys as a firm and as a corporation for probably ten years.

Q. Had it been a corporation that long?

A. No sir; I think about four years ago they attempted to make a corporation and prior to that time it had beeen a firm composed of Dr. Edward Zier of Minneapolis and Michael Zier, brothers. Then an attempt was made to incorporate it by corporation papers and Mr. Urey, the bookkeeper, as I remember it, became the third corporator, but I don't remember exactly about it.

Q. Do you remember the stockholders of the company and how much they owned of it respectively?

A. I saw the stock book in December, but I would not undertake to give the exact proportions; there was no stock subscriptions that ever I knew of. In fact, under the form under which they were incorporated no occasion for it as I saw it. It was incorporated with the idea of a corporation taking all the property of the firm for all of the stock of the corporation. It was incorporated with only $25000 of stock and to answer the question more in detail, I think the stock was issued, two or three or four shares to Mr. Urey, something nearly half of the total capital stock to Michael Zier, two or three shares of the stock to Dr. Edward Zier of Minneapolis, and something less than half of the total capital stock to Minnie M. Zier his wife, now widow, and I think Doctor Zier became the president and I know that Michael Zier was made vice-president and treasurer and Mr. Urey the secretary.

Q. Were you familiar, that is somewhat familiar with the business and plant for some years by reason of being adviser? adviser?

A. Only in this way—

The Court: The question is not how, but the question is were you familiar.

A. Then I was never in the plant in my life. I know where it is located, in some buildings belonging to the Monon Railroad.

Q. What I mean more particularly is did you know of its financial standing?

A. I knew it was hard pressed, and I knew that recently that it was insolvent, thoroughly satisfied of that, at the time of all these matters inquired about.

Q. How long before December last had you been advising with Michael Zier, who was the manager of the plant, as to the financial condition and what might result as to the plant?

A. I think the only matters that Michael Zier and I talked about as to the financial condition of the plant, up until about November and December, was the matter of the indebtedness to Mrs. Minnie Zier. He talked to me about that. The business of the firm, that is their controversies over contracts and so forth were usually talked over with my brother, who was the detail man, and Mr. Zier talked with me about Mrs. Zier's matter. I well knew Doctor and Mrs. Zier, they were friends of mine.

The Court: There's no question about who were your friends. Just answer the question.

Q. How much did the concern owe Minnie Zier, if you know?

A. $18000—I can only give round figures—$18000. on account of a couple of notes that had been—

By the Court: Just answer the question. How much it was that was owing to her. He did not ask you anything about the note.

A. $18000 and a note of $1725. is all that I knew anything about.

Q. Nearly $20,000?

A. Yes sir.

Q. Did you know prior to December the firm of Ryerson and Son of Chicago?

A. Never; that is, I knew there was such a firm in my talk with Mr. Zier; it is a corporation.

Q. You knew it or learned it from Zier?

A. Yes sir.

Q. When did you first meet a representative or agent of that company?

A. Never until I went to their place in Chicago.

Q. What was the purpose of your going to their place of business in Chicago?

A. A three-fold purpose. Mr. Zier had told me that they were trying to find a partner or some one to put money into the business to keep it going and that he thought they would help him. Mr. Zier usually spoke—

The Court: Never mind about what he spoke; just answer the question.

A. These were the purposes I was going for.

The Court: The purposes cannot be what he usually spoke; just answer the question.

A. I went there for the purpose of ascertaining whether they would give him any financial assistance, do anything to bring the company out of its difficulties and whether they would as the largest creditor institute proceedings for a receivership in the State court, and that latter was the principal business in my mind. I did not have much faith in the other proposition, although Mr. Zier did; that is, I did not attach much importance to it. .

By the Court:

Q. The principal thing on your part was to see whether Ryerson & Son would institute proceedings in the State court against M. Zier & Co.?

A. Yes sir.

Q. And you represented M. Zier & Co. at that time?

A. Yes sir that was it.

By Mr. LaFollette:

Q. Did you know before going to Chicago who represented Ryerson & Son, or whether they had an attorney?

A. No sir.

Q. Did you know substantially how much money was owing to Ryerson & Son?

A. Yes, sir I had their account.

Q. How much was it?

A. Substantially, $15000.

Q. Did you know the fact that about $3100 had been paid to Ryerson & Son within the last few months prior to the time you went to Chicago.

A. I think so. I think the statement showed it.

Q. Do you know the date of the payment?

A. I could not undertake to say now, but I should say that it was within the time you mentioned.

Q. Did you have in your hands for collection the claim of Minnie Zier?

A. No sir.

Q. In what way did you represent her and act for her?

A. I did not represent her.

Q. Under what arrangement or for what reason was the money paid by M. Zier & Co. for Minnie Zier to you?

A. Mr. Zier told me about the middle of December that he was ready to pay her the money; I had heard before that he intended to pay her and I supposed that these sums that he had taken out of the business for her were being paid direct to her. Her agent, Mr. Mergel, had been there, but I had never seen him. He had been to the bank. He always said Mr. Mergel,—he said, I wrote Mr. Mergel to send you Minnie Zier's papers. I want to pay that money and he said "I wish you would get them and he would inquire

whether they had come or not. So I telephoned to Mr. Mergel, he gave me his address, and I telegraphed Mr. Mergel to send the Zier papers and in that connection wrote him that I wanted to know Minnie Zier's connection with that firm. I called it a firm because I had not regarded the corporation as being well carried out; I wanted to know about that; in answer to that he sent me copies of two notes assigned by the New Albany National Bank, assigned without recourse; one of them Mr. Connor has. He sent me copies, he did not send the originals; meanwhile we had talked about the matter of the receivership.

Q. You had talked that with Mr. Zier?

A. Yes, sir. He wanted to get some way by which he could keep the plant going and at the same time get some adjustment with his creditors and he believed that Ryerson & Son, of whom he was a large customer, would come in an aid him in this by financial means if he could keep this thing going. It was my own offer late in the month after these copies of notes came—then I said to Mr. Zier, I am going to Chicago as we had arranged for me to go and see Ryerson & Son and I will pay that money to Mr. Mergel. That was my own proposition, as I recollect it. Mr. Zier wanted those notes sent down to our office to be paid and Mr. Zier paid the money, I think he paid it on the 24th and the 26th of December.

Q. In two separate payments?

A. I think he paid two sums; I think the books show that on the 24th—

The Court: It is not a question of what the books show.

A. It was not paid to me, but to my brother, I was not present.

Q. If you don't know, say you don't know.

A. It was paid on the 24th of December, except $2100 and that was paid on the 26th of December.

Q. Making all together $9600?

A. Yes sir.

Q. You took that money with you when you went to Chicago?

A. No sir; not all of it; I took $9000, I said to Mr. Zier—

The Court: You have answered the question.

Q. You appropriated $600 as a fee?

A. Yes sir, I required him to pay a fee and gave him a receipt for it.

Q. Altogether you got $9600 and kept $600 and took $9000 to Chicago and paid it to Mr. Mergel?

A. Yes sir.

Q. Did you meet him at Chicago?

A. Yes sir.

Q. He did not live there?

A. No sir; I telegraphed him to meet me at Chicago.

Q. And you turned over the money to him there?

A. Yes sir; that is, I gave him a draft for it.

Q. At that time you were there also for the purpose of arranging for the institution of a suit which you regarded in the nature of a friendly proceeding in the interests of the defendants as much as of the plaintiff?

A. Yes, sir; a friendly receivership to keep the plant going.

Q. By having a receiver appointed, who would under the law and directions of the State court operate the plant and subsequently arrange with the creditors?

A. Yes sir, that was the real purpose of my visit to Chicago.

Q. Up to that time had you had any conference with William W. Watts?

A. No sir.

Q. You did not talk with him about it?

A. No sir.

Q. The plan of proceeding in the State court at New Albany to have a receiver appointed and operate the plant of M. Zier & Co. was a plan you had formulated yourself?

A. Yes sir, between Mr. Zier and myself.

By the Court:

Q. Well, you went to Chicago for the purpose of arranging with Ryerson to bring this friendly suit?

A. That was my desire.

Q. Did you tell them you had brought to Chicago $9000 of the assets of this corporation and turned it over to one of the stockholders?

A. No sir.

Q. And the arrangement was made that they should bring this friendly suit and adjust the affairs of this corporation and you had just paid over $9000, which you said nothing about?

A. That is it.

Q. (By Mr. LaFollette): Had you had any correspondence with Minnie Zier herself?

A. No, she—

The Court: That question is answered.

A. I never had any correspondence with her in my life.

Q. Had you had any correspondence with her agent prior to the time that Michael Zier told you that he wanted to pay her a part of what he owed her?

A. No sir; I did not even know his name and I did not know she had an agent.

Q. You learned that through Michael Zier?

A. Yes sir.

Q. And then at his request you telegraphed to that address but received only copies of the notes?

A. Yes sir.

Q. Then after having received copies of the notes, M. Zier turned over to you $9600, and you telegraphed the agent to meet him at Chicago and you paid him $9000?

A. Yes, sir.

By Mr. Miller. It certainly seems to me that this hearing will be long enough if the testimony is stated once, without the district attorney repeating it over again and summarizing it after the witness; I object to that.

Mr. LaFollette: We will save you that.

The Court: Don't have any unnecessary repetition.

Q. When you got to Chicago and went to Ryerson & Son whom did you converse with there?

A. First with Mr. Hamford, the credit man, the man I endeavored to speak about a while ago.

The Court: Just answer the question and we will get along a great deal faster; if there is an explanation proper you may make it.

Q. Did you with him talk about the kind of suit you wanted to have brought?

A. Yes sir; I told him the kind of suit I wanted to have brought.

Q. Was he familiar with court proceedings?

A. He manifested a good deal of familiarity with them yes sir.

Q. Did he indicate to you if you instituted proceedings of that kind against M. Zier & Co. that it might result in bankruptcy proceedings.?

A. Yes sir.

Q. Did you talk that matter over with him? Did you tell him that the plan you had formulated you thought would avoid that?

A. No sir; I did not tell him that. I told him on that point, but I did not tell him that. I talked with him on that point.

Q. Did any one else engage with you in the conversation of behalf of Ryerson & Son?

A. Mr. Jackson was sent for, whom I regarded as an attorney about the place.

Q. Did he talk with you on the same subject?

A. Yes sir.

Q. Did you explain to him the plan that you had in mind about the suit?

A. Yes sir I think so.

Q. And wanted them to institute it?

Q. Did he manifest a knowledge of court proceedings?

A. Yes sir.

Q. Was he familiar with the bankrupt law also?

A. I think so.

Q. Did he talk to you about the probability of a suit instituted resulting in bankruptcy proceedings?

A. I think so.

Q. By the Court: What was said about that?

A. Well, I was going to say; I said in substance that this suit would not prevent bankruptcy proceedings. I remember they asked me if there could not be bankruptcy proceedings, if Zier & Co. had not committed acts of bankruptcy.

A. I said lots of them; preferences, lot of them, and the company is insolvent, but we believe if suit is filed in the state court and the property operated and the creditors all notified and brought together the matter can be kept in that shape and I said to them I believed the state court would retain the property, the plant, and operate it anyhow, and the principal argument I advanced—

The Court: You were asked what you said?

A. I said the bankrupt courts would be loth to operate a small plant like that at a distance and I thought a receivership in the state courts would be the best for all parties concerned, as far as operating the plant was concerned. When I say I said this to Mr. Jackson—Mr Jackson and Mr. Hamford and I were all talking and as to who I addressed the remarks to I cannot remember.

Q. That is not material.

A. And I talked about the town, that we wanted to keep the factory going; that the plant was in leased buildings and its stoppage and failure to pay rent would forfeit the lease and it would destroy the business of the concern and they knew the reputation of the boilers made there and so forth; so that to sum it up I was urging upon them that it was best for them and everybody, but especially I was representing Zier and Company to keep the plant going, to keep the men employed, to have a state receivership, and I advocated the idea that I did not think the bankrupt court would operate the plant and that was the trend of the matter I also talked afterwards, to I think the gentleman's name is Butler; this is a corporation of New York and Chicago, and I think Mr. Butler is the vice-president at Chicago and I talked with him and he wanted to see the general attorneys of the firm and it was arranged that I would meet with Mr. Jackson and Mr. Hamford at the office of these attorneys of the firm in Chicago that afternoon, I think at two o'clock; this was on the 29th of December, which was Monday, and the day before the Receiver was appointed; in a general way, that was all I said.

Q. That was agreed on—it resulted in an agreemetn to bring this suit?

A Not there, not there, not there; I urged the suit but they did not assent to it there. Mr. Butler, as I understood, he was to meet with these attorneys and me, but he did not; of course they had the statements of this concern there and insisted—I took up the statement showing that the indebtedness of the firm—just a general statement that Mr. Zier had furnished showing the indebtedness of the firm was much better and we talked about that because they brought out statements showing that the assets were reported as much larger and wanted me to explain that and I told them that I could not; that I had asked Mr. Zier to give me a true statement of this concern and he had given this estimate to me and it was made out in my office but not in detail.

Q. Do you know where Mr. Zier got that $9600 when he paid it to you?

A. No sir.

Q. Did you ask him about it?

A. Yes sir.

Q. You knew he got it out of the business?

A. Yes sir.

Q. You knew he got it out of the corporation?

A. It was corporation money.

Q. You knew the corporation was insolvent?

A. Yes sir.

Q. When you were in Chicago talking about indebtedness and that there had been preferences did you tell them anything about having brought up $9000 and turned it over to one of the stockholders?

A. I did not tell them so, I said nothing about that.

Q. When did you reach the conclusion as to what steps should be taken in the same day?

A. In the afternoon.

Q. Of the 29th.

A. Of the 29th and I think the firm—

The Court: The question is when you reached that conclusion?

A. At the office of this firm.

Q. What was said to you, if anything, about who would represent them at New Albany?

A. All that was said to me on the subject of who would represent them at this meeting in the afternoon, Mr. Hamford and Mr. Jackson, who were present, with the attorney, Mr. Fisher, I think,--Mr. Hamford asked me the names of our attorneys at New Albany and I gave him their names generally, three or four of them; we have not very many; and I gave him the name of Mr. Stotsenberg, Kelso—

The Court: Read him the question.

The question was read by the reporter.

A. That was said, and after a while Mr. Hanford and the attorney, Mr. Fisher, if that was his name, went out and had a consultation in another room, and Mr. Jackson and I remained.

The Court: We don't care anything about that. Just answer the question.

A. They returned and said, and then for the first time I heard Mr. Watts' name; either Mr. Hanford or the lawyer said, I cannot tell which, "Mr. Watts of Louisville will represent us."

Q. Had you said anything to them about Mr. Watts?

A. No sir, it never occurred to me—

The Court: Just answer the question.

Q. Then what did you do after you learned from them that Mr. Watts would represent them? What did you do about the matter?

A. I went back to the hotel and telephoned to my brother my conclusion of the matter—I am entirely willing to state that if it is proper.

Q. That he was to appear for M. Zier & Co.?

A. No sir. I said this in substance to my brother. That I had seen these folks and that they had not determined the matter, but that Mr. Jackson was coming down to Louisville to consult with the Watts, I think I said, it is a firm; that he was coming down that night, and that they would determine the matter, and that I thought they would apply for a receivership, because I think I said to him, "Jackson takes the same view of it that I do: and if they send for you you can go over and consult with them."

Q. You know how Mr. Watts' name was brought into the consultation there in Chicago?

A. I have told you all I know on that subject. That is the first time I heard Mr. Watts' name brought into it.

Mr. Fairleigh: I would like for him to state fully.

Mr. LaFollotte: He said he has stated all they said.

A. That is all they said. I said something.

Mr Fairleigh: I want to know how he got Mr. Watts' name.

A. I don't know how they got Mr. Watts' name

Q. By the Court: The question is do you know how they got Mr. Watts' name?

A. Not a word. I said—

The Court: That answers the question. You are a lawyer. You know that it is not necessary, but just to answer questions.

Q. Was the suit instituted before you came back to New Albany?

A. Yes, sir; I did not get back to New Albany until—

The Court: You have answered the question.

Q. When did you return to New Albany?

A. I think on the evening of New Year's.

Q. How soon after you did return did you have a conversation with Mr. Watts the attorney for Ryerson and Sons?

A. I do not now remember.

Q. Did you have any conversation with him before the creditors' meeting that has been spoken of here?

A. I probably did. I saw him over there but I do not recall any conversation; it was just a casual conversation if I met him.

Q. Do you recall any conversation you had with him about having the creditors' meeting and the purpose of it?

A. No sir.

Q. Do you remember of having been present at that meeting?

A. Yes sir; I was there.

Q. Were you representing M. Zier & Co. at that meeting or representing the creditors, which?

A. I would say both.

By the Court:

Q. Which meeting was that?

Mr. LaFollette: The meeting in the court called the creditors meeting.

Q. You say you represented both a debtor and a creditor.

A. I would say I represented both.

Q. Both the debtors and the creditors?

A. I think so.

By Mr. LaFollette:

Q. Was there any statement made by you at that meeting to the court or meeting?

A. I think so.

Q. Did you understand that that was a matter that was being presented to the court as a court?

A. I understood that it was to take the sense of the creditors as to whether the court would order the plant to be operated to complete existing contracts and that the views of the creditors were to be taken.

Q. What was said to you or anyone to you either before the meeting or at the meeting about there being an order entered enjoining creditors from taking steps other than in that court?

A. Nothing, and I never expected any such thing.

Q. You did not know anything about that?

A. No sir, I did not know anything about that; I left before any order was entered.

Q. Do you know who formulated the order that was entered?

A. Mr. Watts was working on it at a table. I think he formulated it.

Q. Did you read it over?

A. No, sir—I left before

Q. You did not hear it read?

A. No, sir—I never heard it read.

Q. Was there anything said by you there at that meeting—either by you or any of the creditors, about what disposition had been made of the assets of the concern and about its solvency or insolvency, and the amount it would probably pay on its indebtedness.

A. I think the subject was generally talked over—all those things you have named.

Q. Did you say anything there about having paid the $9000 to Minnie Zier?

A. No, sir.

Q. Did any creditor say anything about that?

A. No, sir.

Q. Was there anything said at that meeting by Ryerson & Son about having recently received a credit on their claim of $3100?

A. Not that I heard.

Q. Was not the ability of the plant to pay money mentioned and talked about?

A. I think it was not the ability to pay money—I think the advantage and disadvantage of operating it was talked about.

Q. Did W. W. Watts represent Ryerson & Son at that meeting?

A. Yes, sir.

Q. Did he also represent the Receiver, the New Albany Trust Company?

A. Yes, sir.

Q. Was it not one of the questions that was being considered, the advisability of having the plant continue to operate and as an argument in favor of it, was it not made to appear that they had been able recently to make payments on their indebtedness?

A. I would answer the first part of that question yes. I have no recollection of anything being said about recent payments.

Q. Did not any of the creditors in talking about the advisability of continuing the plant speak of or inquire whether or not they had been making any money, whether or not they could make money if they would operate it?

A. Probably.

Q. Did not Mr. Watts, representing Ryerson & Son; say that it would be profitable because they had quite recently made payments on their debt of over $3,000.

A. I heard nothing of that kind.

Q. And you did not urge in favor of its operation that they had quite recently paid on an indebtedness, $9000?

Mr. Miller: He has already said there was not a word said on that subject and I object.

The Court: I think the point well taken.

Q. The question was not argued very fully as to those matters at all?

A. I do not remember that the question of payments was mentioned at all.

Q. Was there any objection made by any of the creditors to operating the plant?

A. I understood it was unanimous.

Q. After you came back from Chicago and talked to Mr. Watts about the business, was there anything said about bankruptcy proceedings before any were instituted?

A. No sir.

Q. Was there anything said by him to you either at the creditors' meeting or before about taking any steps at that meeting to prevent anything of that kind?

A. By Mr. Watts to me?

Q. Yes.

A. No sir.

By the Court:

Q. Then you say that that part of the order which attempted to enjoin the creditors from proceeding in any other court or any other suit except by intervention in that suit or action was without your knowledge?

A. Yes sir.

Q Without any authority from you; I did not expect it.

A. Yes sir, I did not expect it.

Q. The inference is that Mr. Watts put that in the order?

A. No sir.

Q. He was drawing the order?

A. I don't know who put it in. He was drawing the order. And I was informed at whose suggestion it was put in, but it was not Mr. Watts.

By Mr. LaFollette:

Q. When did you learn that bankruptcy proceedings were instituted?

A. I cannot say, but my impression is that I never learned of any bankruptcy proceedings, until Mr. Connor either came down with his order or some one told me that the summons had been served on Mr. Zier. I think he brought in the summons or subpoena.

Q. Did you know personally of the filing by Mr. Connor of the petition in the Circuit Court asking the receiver of the state court to turn over the property to him as receiver?

A. No sir.

Q. You did not know personally about them?

A. I was not present; I heard of it afterwards.

Q. Did you take any steps in connection with it or go to the court about it?

A. No sir I was not in court that day.

Q. Did you know that the petition was filed by Mr. Watts for the receiver asking an order to appear at Indianapolis and discuss the question of the jurisdiction of the two courts?

A. I heard that it was to be done and was done.

Q. Did you talk with Mr. Watts about it before it was done.

A. Yes sir.

Q. At your office or in the court room?

A. At my office. There was a few words said.

Q. Do you remember what was said? If so state it.

A. I think Mr. Watts asked me whether I thought if the matter was presented to Judge Anderson he would allow the receiver down there to continue to operate the property and my impression is I told him I thought Judge Anderson would permit the State receiver to operate the property. I think Mr. Watts said to me that he was going to telephone up either to Mr. Butler or Judge Anderson on that subject and the telephoning was done in our office, but I was working on a brief in the library some distance off and did not hear what was said.

Q. Did you know of the entry by the Floyd Circuit Court of the order continuing the petition of Mr. Connor asking that the property be turned over to him by the Trust Company?

A. No, sir.

Q. You were not present here when the question of jurisdiction was discussed before the Court?

A. No, sir.

Q. When following that did you learn that the statement had been made here that the Trust Company would turn the property over?

A. The next day.

Q. What conversation, if any, did you have with Mr. Watts or Mr. Sachs on the next day about the matter?

A. I think it was the next afternoon they came in the office and there was some talk about it.

By the Court:

Q. What afternoon was that?

A. I think it was Wednesday afternoon.

Q. What was said?

A. I do not recall that Mr. Sachs said anything about it, except that he was there, but Mr. Watts talked about arguing it up here; said that my brother had said that the Trust Company would turn over the property and that he said he would advise it. That was the substance of the conversation. In addition to that he said—do you want the whole conversation?

By Mr. LaFollette:

Q. Yes if there was anything further said about it?

A. He said he was very much—he thought he had been misunderstood by Judge Anderson and he appeared to be mortified about it, that he had not intended the construction that had been put on his acts and saying the things a man does under such circumstances where he thought he had been misunderstood. He talked at length.

Q. Was there anything said at your office on Wednesday afternoon about taking any other proceeding in the State court to hold the property in that jurisdiction?

A. No sir.

Q. When did you first learn that Judge Utz of the circuit court was objecting to turning the property over by the Trust Company?

A. On the following morning—forenoon.

Q. Where were you when you learned that?

A. In my office.

Q. From what source did you learn it?

A. From my brother Henry.

Q. Did he come and tell you at the office?

A. Yes sir.

Q. Then what did you do following that information?

A. I indicted. I dictated, I should say, a little note to Mr. Connor, that is here—based on what my brother had said to me, stating that he had filed a report and attached a copy of the report to it, stating that we had filed a report and that the Judge had orally remarked that we should or that he preferred, or something to that effect—asking that we not deliver the property to Mr. Connor until our report was filed, that we thought that report could be filed on the following morning and that if Mr. Connor could defer his demand until then it would relieve the receiver, or the Trust Co., or us, or something, or considerable embarrassment, but if he insisted, we were bound to say that good faith required that the property be surrendered to him and I told my brother to take that around to Mr. Connor and he asked me to go and see if I could not get the report accepted, and that was my first appearance.

Q. In the Court? When you went over to the court for that purpose who was present there?

A. Judge Utz. It was in his chambers, not in the court room.

By the Court:

Q. It was in vacation?

A. Yes, sir. Judge Utz, Mr. Watts, Mr. Sachs and I think Mr. Kelso were sitting in the corner and either the clerk or the deputy clerk. I am inclined to think it was the deputy clerk, Will Ruoff, that was sitting there?

Q. Had you learned then of the action of Judge Utz in refusing to accept the resignation?

A. No sir.

Q. What was said by you at that time and by Judge Utz in the presence of Mr. Watts and Mr. Sachs about the subject.

A. I cannot recall, except that while I was there I said either that my brother or the receiver had told Judge Anderson that the receiver would turn the property over to Mr. Connor and that not withstanding anything else or something of that kind, it was going to be done and was probably done.

I will correct one thing: when I went in Mr. Sauer the secretary of the company was there. My brother said to me, "If Fred Sauer is over there, send him over." And when I went in, I said, "Mr. Sauer, my brother wants you at the Trust Company," and he got up and went out and I said to Judge Utz, "It is probably done now." The conversation, I can not recall the words, but I think in a general way they were discussing whether the decision to turn it over was right or not, the law of the case. But I can not undertake to give what was said.

Q. Was there anything said by Mr. Sachs or Mr. Watts against turning it over.

A. No sir; not in my presence. I think I said in that conversation that Mr. Watts had advised it or agreed or promised it himself. I think I said that and he assented to it. I do not remember that Mr. Sachs said anything. I was talking to the Judge and I was there a very short time.

Q. Did you know at that time that there were arrangements being made to have Mr. Kelso appointed receiver instead of the Trust Company?

A. No sir.

Q. There were not any proceedings taken while you were there by the Judge?

A. Not in my presence and not while I was there.

Q. When did you learn, if you did, that some proceedings were taken to have the Trust Company cited for contempt of court?

A. In the afternoon I think of Thursday.

Q. Did you go before Judge Utz in regard to that matter with the president of the Trust Company?

A. Yes sir.

Q. Who was present at that time as near as you can remember?

A. The same persons. There may have been some others in there.

Q. D. A. Sachs was present?

A. I won't say whether Mr. Sachs was there.

Q. Was Mr. Sachs there?

A. But I think they were both there.

Q. Was there any one there acting in the matter of having proceedings taken against the Trust Co. or any attorney representing that proposition?

A. Apparently not.

Q. Was the court doing that on his own motion?

A. I cannot say about that.

Q. Or rather the judge, there was no court, I guess. Did you make any written answer for the Trust Co.?

A. No sir, no written answer.

Q. Did you know that there were charges also against Watts for contempt?

A. I think so. I think the rule contained his name.

Q. Do you know what he said or did in regard to answering that citation?

A. No sir.

Q. You were not present when any steps were taken?

A. In fact I know nothing except what I said and the judge said when I went in with the president of the Trust Co.

Q. At that time you knew that Mr. Kelso was to be appointed receiver or had been?

A. No sir, I did not.

Q. You did not know it yet?

A. He had not been.

Q. He had not been appointed?

A. Not to my knowledge.

Q. When did you learn that he had been appointed?

A. Saturday morning.

Q. He had been appointed the day before?

A. I learned it from the newspaper and I asked my brother about it and learned it from him.

Q. Did you know during the evening of Friday that proceedings were being had and that the sheriff had gone down and taken the property from Mr. Connor?

A. No sir, after supper I did not go out in town?

Q. You did not learn that until Saturday?

A. I read it in the paper that was my first knowledge of it.

Q. A matter is suggested that I want to ask you about. At the time that you went over to say to the Judge that you would turn over the property in response to the statement that has been made here that it would be turned over, and while talking to the Judge on that subject, did Mr. Sachs ask you some question in regard to the act of the law and did you reply to him that you did not want to be interrupted? When he asked you if you had turned the property over—do you remember that incident?

A. No sir.

Q. So far as the matter of turning over the property and its being retaken by the sheriff and being put into the possession of Mr. Kelso, you have stated all you know about that? What further do you know about that?

A. I have stated all I know about the retaking of the property. There is much I know about the turning over of the property by the Trust Co., the efforts to turn it over that I have not stated and would be glad to state it if permitted, if you desire to know.

Q. You did turn it over?

A. Yes sir.

Q. That is substantially all there is of that, except the details which I do not care for?

A. Very well.

Q. Since the property was turned over, I want to ask you a little further about the matters that we were inquiring about prior to the institution of the suit. You have also returned to Mr. Connor, or paid to him, have you not, a part of the money that was paid you by M. Zier & Co.

A. I returned to Mr. Connor the $600, attorneys fees, less expenses to Chicago, $50 for that service. I gave him a check for $534.80. You have the check and letter I suppose.

Q. You may state if this note and the receipt attached is the paper you received and on which you first made payment of the money.

A. This is the note which was paid in full and taken up. This is the receipt showing the application of the whole $9,000 and identifying the other note on which the balance was credited. This is a statement of intention, I do not know what you would call it, written by Michael Zier at the time and delivered to me.

Q. That was delivered to you at the time you paid the money?

A. Yes sir, part of that transaction.

Q. Since that time you paid back the $600 less expenses to Chicago and $50.

A. Yes sir.

Q. (By the Court:) What was the $50 for.

A. The $50 was what I estimated the work performed for Mr. Zier at Chicago in getting Ryerson to bring the receivership suit—for those services, and there was $15.00 expenses.

Q. (By Mr. Lafollette): If you were returning the fee you received in the first place, why did you not return it all.

A. I thought that having performed only that service and being unable to perform any service while I might have kept it as it was paid me as a fee and while I thought it was usual to charge an insolvent a fee when you took his business, I had money there I had not earned and could not earn and I preferred for my own sake after talking to my brother to turn it back to these creditors. At that time I did not know how this money had been gotten out of bank, that the bank had paid the money upon checks that purported to be for payroll. Having learned that from Mr. Connor, I said under the circumstances, "I think it all ought to be paid back," and he so understood.

By the Court:

Q. All of what?

A. Of the $600, that we got. I did not know until Sunday night about these checks, he brought them up, I never saw any papers or books, except the stock books.

By Mr. LaFollette:

Q. Did you have any notice of the manner in which Michael Zier had taken the money out of the concern, that is under the color of being weekly payrolls and appropriating $1000 of it to this fund?

A. No sir, never; never. I would not have touched it if I had.

Q. After you had paid back the $600, less $50 and expenses, did you also give Mr. Connor a guaranty or agreement that you would pay back to him for the benefit of the Zier estate the whole amount of the $9000.

A. There is the agreement, will you read it?

Q. "Dated March 9, 1903. To F. D. Connor, receiver, M. Zier and Company, bankrupt. December 29th, 1902"—1903 I guess that is intended for?

A. No that is right.

Q. December 29th, 1902, I paid E. F. Mergel for Mrs. Minnie Zier, the sum of $9000, of the funds of M. Zier and Company. Disclosure made by your examination of the books and papers during the last few days, satisfies me that this money still belongs to M. Zier & Co. and should be returned to the estate of said bankrupt. In view of the fact that the money passed through my hands, I hold myself

responsible for its return and guarantee it shall be paid to you on demand. CHARLES L. JEWETT."

A. Yes sir, indeed, that is just the way I feel now.

Q. Why do you bind yourself for that?

A. If I am allowed to answer that fully I would be glad to do so.

By the Court:

Q. You are always allowed to answer a question why.

A. Because I think that I ought not in view of all the facts to have handled the money and paid it over. Because I believed and still believe the transaction as to me was entirely legal, but when I find out that these men had been taking the money out of bank of their corporation by means of making a check for wages when in fact it was being accumulated—I think I ought to have been more careful. I inquired particularly of Mr. Zier about this and Mr. Zier told me sometime before—

The Court: You are giving your reasons now.

A. Unless I can make them full, I can not explain it. I want to state all the facts as to my connection with the money that moved me, because I thought that was due me and I would be very glad to state it.

Q. Proceed then.

A. After Dr. Zier's death, sometime, I do not know how long after the payment of these notes by Mrs. Minnie F. Zier, $18,000 in bank, Mr. Zier told me that he had promised and intended to pay it back and proceeded about how he thought of his dead brother's widow's money being taken that way and said that he was going to pay it back as he could. I knew that he was paying people as they pressed him. I never knew until he mentioned to me the fact that he had ordered these papers sent to me—I never knew but what that amount had been paid to Minnie Zier and I did not know how he took it out or anything of the kind, and when he suggested that he wanted the papers sent down and wanted it paid, I wrote to Mr. Mergel and wanted to know all about Mrs. Zier's connection with the concern, whether she had ever been a stockholder or creditor, and when I took the money I took it and paid it myself with the thorough belief that this company had a right, as I believed, and still believe, to pay any valid obligation, and my point was to know that the obligation was valid, that it was not some simulated family indebtedness. When I saw the notes assigned by Mr. McCullough, the President of the New Albany Bank, I had no doubt about the validity of the indebtedness, but I ought not to have handled the money at all. I see that now. I ought to have been more careful. I asked Mr. Zier stood on the books, how he paid it out.

And he said it was charged to him, Michael Zier, treasurer, for Minnie Zier. I never saw the books in my life. I don't see why I did not go and insist on looking at the books and feeling that way, I feel without reference to anything else that unless Mrs. Zier's agents, knowing these facts, sees fit to pay that money back, I have felt that I would be on better terms with myself to pay it back. I did not include my firm. I said I would myself pay it back.

Q. Is Mr. Mergel a lawyer?

A. I think not. He is the vice-president of a bank. That seems to be his business.

Q. In view of your knowledge of the bankrupt law and knowing that this was a preferred payment that the company was making, and in view of possible bankrupt proceedings, did you not arrange with Mr. Mergel that in the event bankruptcy proceedings were instituted that would probably necessitate the return of the preferred payment, that he was to hold this money subject for future demands if it became necessary to have it returned?

A. No sir; the paper there written by Mr. Margel explains that.

Q. Did you at the time that you came back from Chicago and the institution of these proceedings talk with W. W. Watts about this payment and the circumstances under which it was made, and so forth?

I never talked with Mr. Watts about the payment and so forth, no sir.

The Court: I wish you would call the attention of the witness to the letter of Mr. Mergel and read it.

Q. Is this letter dated December 29th, the letter to which you refer?

A. Yes sir.

The letter referred to was read as follows:

"Dec. 29th, 1902.

M. Zier, Esq.:

In reference to the payment made by Mr. Jewett on behalf of your company will say that I know that my client is earnestly desirous that your matters result to your satisfaction and advantage. In case same money could be used to advantage in making adjustments and clearing up all the matters you wish to have adjusted and Mr. Jewett has said you wished to get a clear settlement with everybody, including my client, I would recommend to my client to use the funds for that purpose by way of assistance. This is all I care to say. Yours truly,

E. E. MERGEL."

The Court: Is that the explanation?

A. Yes, sir; that refers to his getting a settlement with his creditors.

The Court: When you answered the other question no and said the letter explained the situation, you meant that letter explained it?

A. That is it; yes, sir.

By Mr. LaFollette:

Q. Did you make any explanation of this payment and letter to any of the creditors in connection with the business after your return from Chicago?

A. No, sir.

Q. Your return or statement that you have made to Mr. Connor and here is the only statement you have made about it up to that time?

A. Up to that time.

CROSS-EXAMINATION.

Questions by Mr. W. M. Smith:

Q. I understood you to say that on Thursday afternoon when you returned to the court house you was not quite sure Mr. Sachs was there or not.

A. Yes sir. My impression is he was, but I am not sure. I think he was there.

Q. You are not sure Mr. Watts was there on Thursday afternoon, either, are you?

A. My impression is he was. I did not sit down. I just walked in with Mr. Mosier and stood at the table and addressed Judge Utz. I did not sit down.

Q. May it not be that you are mistaken about their presence that afternoon?

A. Yes sir; it may be. They may not either have been there. I may have seen them on the street.

Q. Do you know what time in the evening it was that you returned to the court house?

A. I think it was the middle or after the middle of the afternoon.

W. C. Utz, a witness called on behalf of the government, being duly sworn and examined by LaFollette, Esq.

Q. You may state your name to the Court?

A. William C Utz.

Q. Where do you live?

A. New Albany, Indiana.

Q. Are you the judge of the Floyd Circuit Court?

A. Yes sir.

Q. How long have you been on the bench of that court?

A. Since November 26, 1898.

Q. Do you hold court in any other county or is that the only county in your circuit?

A. Floyd County is a judicial circuit, the fifty-second.

Q. Are you acquainted with Mr. W. W. Watts, an attorney?

A. Yes sir.

Q. Does he practice in your court.

A. The first he ever practiced in my term of any term of court was the January term, 1903.

Q. Was that at the time of filing the case of Ryerson & Son against M. Zier & Co.?

A. The Ryerson suit was filed on the 30th of December, 1902, in vacation.

Q. Had you been acquainted with him before that time?

A. I had no personal acquaintance with him previous to that time; I knew him by sight.

Q. Had you been acquainted prior to that time with D. A. Sachs, an attorney of Louisville.

A. No sir.

Q. When did you become acquainted with him?

A. On the 18th day of February.

Q. You are acquainted with Charles L. Jewett and H. E. Jewett?

A. Yes sir.

Q. You are acquainted with Charles D. Kelso?

A. Yes sir.

Q. They are each members of the bar of your court?

A. Yes sir.

Q. You are acquainted with Mr. Hester, who is also a member of your bar?

A. Yes sir.

Q. Tell the court whether or not you had any information relative to the institution of the suit by Ryerson & Son against M. Zier & Co. prior to the day of its being filed?

A. I had not.

Q. When did you first learn that such a case was pending in your court?

A. When Mr. Watts and Henry E. Jewett came into my office with the suit about two o'clock on the afternoon of December 30th.

Q. What statement, if any, was made to you at that time by either of them?

A. I think it was stated in a general way by Mr. Watts and by Mr. Jewett about his indebtedness, that he was unable to meet it. Mr. Watts handed me the complaint showing the amount of the indebtedness to Ryerson & Son on which they had a prayer for the appointment of a receiver. I read the complaint and about that time Mr. Zier came in.

Q. Michael Zier?

A. Yes sir.

Q. You say he came in?

A. Yes sir, he came in and consented to the appointment of a receiver.

By Mr. LaFollette:

Q. What was said to him and by him after he came into the room?

A. I cannot state exactly what was said to him. I know there was some discussion or some talk as to the fact of him being insolvent and unable to meet his obligations, and it was agreed that the receiver should be appointed and it was appointed and the receiver was appointed in the usual way.

Q. That was the same day that the petition had been filed.

A. Yes sir.

Q. Who was appointed receiver?

A. The New Albany Trust Company.

Q. Did you fix a bond?

A. I think under the statute they are not required to execute any bond. They did not execute any bond.

Mr. Miller: That is a trust company.

A. Yes sir.

Mr. Fairleigh: And their stock is the security.

Q. Was Mr. Jewett representing or acting for the Trust Co. or was Mr. Watts?

A. As I understood, Mr. Watts was acting for Ryerson & son and Mr. Jewett was there as the attorney of Mr. M. Zier & Co.

Q. Up to that time there was no one representing the Trust Co.?

A. No sir.

Q. Who was it indicated to you that the Trust Co. would accept the trust?

A. I understood from both what Mr. Watts and Mr. Jewett said that it was agreed that if it met my approval that the Trust Company should be appointed.

Q. What else, if anything, was done that day?

A. The order was made and signed appointing the Trust Co. and the Trust Co. qualified that afternoon, as I recollect it.

Q. How soon after that did your court convene?

A. A very short time. I think it was either on the 6th or 9th of January, that it convened. I would not be positive.

Q. What was the next step, as you remember it, in connection with that case that was taken?

A. I think there was some matters in regard to some contracts that were unfinished, they were of minor—little importance, about which I made an order.

Q. Do you remember of a meeting being arranged, known as the creditors meeting?

A. Yes sir.

Q. That arrangement began on the 16th day of January, when the Trust Co., as I remember it, filed a petition. And on that petition a notice was ordered to be given to the creditors, and the petition showed that there was some unfinished contracts, and some creditors claiming they had a right to have certain property delivered to them.

Q. That meeting of the creditors, so-called, was held in open court, was it?

A. Yes sir.

Q. Tell the court whether there was at that time any statement made to you as the court about having an injunction entered enjoining creditors from taking any steps other than by intervening petitions in that case?

A. Yes sir, that was one of the last things that occurred?

Q. Who proposed that to you?

A. I think it was Mr. Stotsenberg. He was representing some of the creditors and I am inclined to believe that the matter was discussed not in open court, but by the attorneys while the court was still in session. I think Mr. Stotsenburg and one or two attorneys took part in the talk among themselves.

Q. Was Mr. Watts present on that day?

A. Yes, sir.

Q. For whom did he appear at that time?

A. For the receiver, the New Albany Trust Co.

Q. Who was appearing for Ryerson & Son?

A. I understood at the beginning that Mr. Watts was acting for Ryerson & Son at the time of the institution of the suit.

Q. He never withdrew his appearance for them?

A. No, sir.

Q. He still stood on the record as attorney for Ryerson & Son?

Q. Yes, sir.

Q. And he also appeared as the attorney for the receiver?

A. Yes, sir.

Q. And on the day of the creditors meeting, did he make any statement on behalf of his client, Ryerson & Son?

A. If he did, I do not recall it now.

Q. Who prepared the entry that was put upon the record that day?

A. I think Mr. Watts did.

Q. Was that read over to the meeting before being entered?

A. I think not.

Q. Did you read it over yourself?

A. Yes sir.

Q. Did you know that it provided for an injunction that has been talked about, enjoining them from taking any other steps?

A. Yes sir.

Q. Did you make any change in it after it was drawn, or did you approve it as prepared?

A. I made a change. There was an injunction against Hoerter and Hester who appeared as attorneys for the Inland Steel Co., and I said to the attorneys, "I don't think that ought to go into the order, that I thought they were acting in the belief that they had a legal right to do what they were doing and I struck that out of the order.

Mr. Fairleigh: He is talking of the original order.

A. No sir on the 24th of January, at the creditors meeting.

Q. It had that in it when it came from Mr. Watts to you?

A. What provision do you refer to?

Q. The one enjoining Hester and so forth?

A. Yes sir.

Q. I am asking about the order they had on the day when they had the creditors meeting?

A. Yes sir, that is the order.

Q. I don't have these dates in mind. Let us get that straightened out.

A. I don't want to make any mistake.

Q. What I mean is this: you remember distinctly what they call a creditors meeting?

A. Yes sir I do.

Q. Was it at that meeting that an order was entered on the record of your court enjoining the creditors from taking any steps other than by intervening petition in the case of Ryerson & Son against M. Zier & Co.?

A. Yes sir, I think so.

Q. Do you know the date of that?

A. That was on the 24th of January, 1903. I want to make this statement in that connection: I do not think that order contained that provision as to the attorneys. I think I am in error as to that and I want to make that statement?

Q. When was that order?

A. It was made later on the 18th of February.

Q. The order which you speak of as having been prepared enjoining Hoerter and Hester from taking certain steps in behalf of the Inland Steel Co., was that made at that meeting or at a later meeting?

A. At a later meeting, I recall that now.

Q. So far as you have stated in regard to that, you desire to correct it?

A. I do.

Q. Was there such a statement made at any time or prepared for you to enter of record enjoining Hoerter and Hester from taking certain steps?

A. Yes sir.

Q. When was that made?

A. Fourteenth of February, the last day of our court.

Q. By whom was that prepared, if you know?

A. I couldn't state that. When I got the order it had been prepared.

Q. Who brought it to you?

A. My recollection is that W. W. Watts did.

Q. You may state to the court whether or not that provision that was in the prepared order seeking to enjoin the attorneys, Hoerter and Hester, from proceeding in the case in certain ways, was stricken out by you before the same was entered of record?

A. Yes sir.

Q. In that same connection, I want to ask you if at that time the bankruptcy proceedings had been instituted in the district court?

A. At what time?

Q. At the time this order was presented seeking to enjoin the attorneys from taking steps?

A. I think so. That morning was the first official information I had of the proceeding in bankruptcy.

Q. I want to ask you if at that time there had been filed in your court by Mr. Connor, receiver in bankruptcy, a petition that the property of M. Zier & Co. be turned over to him?

A. The petition of Mr. Connor was filed before that order was entered.

Q. But the same day, was it not?

A. Yes sir.

Q. Then after that was filed, what attorney appeared and sought for an order enjoining these attorneys from taking the steps you have spoken of?

A. W. W. Watts was appearing for the receiver and seeking to obtain an order directing him to come to this court on the following Monday.

Q. By the Court: And he also sought and obtained an order enjoining the Inland Steel Co., and the marshal and receiver of this court from proceeding any further in this court?

A. Yes sir.

Q. Mr. Watts procured that order from you?

A. Yes sir.

By Mr. LaFollette:

Q. That entry was presented to you by Mr. Watts?

A. Yes sir.

Q. And that had in it originally when he brought it to you the injunction against the attorneys also?

A. Yes sir.

Q. Then striking that out you spread it of record, enjoining Mr. Connor and the Inland Steel Co. from proceeding in the bankruptcy proceedings?

A. Yes sir.

Q. And that was at the solicitation of W. W. Watts, attorney for the New Albany Trust Co., the receiver in the state court?

A. Yes sir.

By the Court:

Q. What did you do with this petition that Mr. Connor the receiver of this court filed in your court asking you to direct your receiver to turn the property over to him?

A. The petition was filed and the entire morning was taken up in the business of the court.

Q. The question is what did you do with Mr. Connor's petition?

A. I did not do anything, because, as I understood it there was to be some order prepared in regard to the matter, Mr. Hester and Mr. Watts, as I understood it, were to present the matter to me. Mr. Hester at that time did not seek the order—

Q. Did you not testify here in this court on the hearing of the contempt proceedings against Kelso and others that you continued that petition until the next term of court?

A. Yes sir that is what I did, we had no time to take it up.

Q. When did the next term of your court begin?

A. The ninth day of March.

Mr. Miller: We have not been able to find this petition filed by Mr. Connor. The entry is there, but the petition is not there.

Mr. Hester: Is not that here in the petition he filed here?

Mr. Miller: If we could get hold of that we would like very much to have it in the record with the rest of the papers.

Mr. LaFollette: If the court will permit, I think I will let Mr. Hester examine as to the proceedings down in the court. He was party to the proceedings and he may ask the questions.

By Mr. Hester:

Q. The petition of Mr. Connor intervening in the case of Ryerson & Son, against M. Zier & Co. was filed shortly after court convened in the morning? Was it not?

A. I think so.

Q. And before Mr. Watts came in?

A. I believe you are right about that.

Q. Then it was stated by Mr. H. E. Jewett that Mr. Watts would be in presently with another petition or something to that effect to you?

A. Yes sir.

Q. Nothing further was said then on the strengh of that statement about the intervening petition but Mr. Watts' appearance was awaited?

A. That is correct.

Q. After that Mr. Watts came in and addressed the court and stated that Mr. Connor's petition had been filed showing that he had been appointed receiver by the United States District Court and asked him the court to require him to enter a full appearance.

Mr. Fairleigh: Are you not leading a little too far?

Mr. Hester: I think the witness would be influenced by leading questions. These matters have been gone over so often.

Mr. Fairleigh: I don't mean to be captious, but don't lead too far.

Q. What was said about entering a full appearance, if you remember?

A. My recollection is that Mr. Watts asked you whether you entered a full or general appearance?

Q. What reply was made to that?

A. You said the paper would speak for itself.

Q. Did Mr. Watts read the petition to the court, to you?

A. He did not.

Q. You understood the nature of it from what was stated, I suppose?

A. Of course, I could not state explicitly, I could state in a general way.

Q. To refresh your recollection, did I not state that it was a petition showing Mr. Connor's appointment, embracing a certified copy of the order of appointment of this court?

A. That is my recollection.

Q. Then what did Mr. Watts do in respect to filing the petition prepared for the New Albany Trust Co.?

A. He filed the petition.

Q. Let me go back just a moment. Before he filed that, what did Mr. Watts say about how and when it had been prepared as to his having been up all night?

A. I could not state whether he said that at that time?
Q. Immediately before he began reading the petition?
A. Yes sir, I think he did.
Q. What did he say about that?
A. I think he stated he had been up a good part of the night preparing the petition.
Q. And he proceeded to read the petition, did he?
A. Yes sir.
Q. Then you asked him I believed if he had an order prepared on the petition?
A. I would not be positive whether I asked him that question or not.
Q. But there was an order submitted at that time?
A. Yes sir.
Q. You say that order embraced an injunction against the Inland Steel Co. and the other petitioning creditors in bankruptcy and against Mr. Connor as receiver and Mr. Pettit, as United States marshal, and also against Judge Hoerter and myself against further prosecuting any suit in this court?
A. Yes sir.
By the Court:
Q. Mr. Watts brought you that order?
A. That is my recollection.
Q. Was it not prepared on the same kind of paper and by the same typewriter?
A. I think so.
Q. And both brought in at the same time?
A. Yes sir.
Q. After you told Mr. Watts in open court that you would not consent that an injunction would go against the attorneys and directed him to strike that out, state what afterwards was said by him to you in that respect later in the day at any time?
A. I don't know.
Q. Was anything more said about the injunction against the attorneys on the street or in the clerk's office.
A. I don't recall it if there was.
Q. Don't you remember that that order, after the names of the attorneys had been stricken out of the part providing for an injunction—that it was interlined and the names put in a second time and brought to you a second time?
A. It may have been.
Q. And that you then a second time instructed Mr. Watts that you would not consent to an order of that kind?
A. I think that is correct.
Mr. Miller: I would like to inquire if testimony or questions can be more leading than that?

The Court: It may be possible, but the witness don't seem to remember it until suggested.

Mr. Hester: I would have a right to refresh his recollection about those details even by leading questions.

The Court: Yes; this witness is supposed to understand what questions are and he can answer himself without being led.

Q. Then what was done about striking the names out a second time if anything?

A. They were stricken out.

Q. And it went on the order book as amended that way?

A. Yes sir.

Q. Do you remember when it was entered of record?

A. I could not state that; it was probably sometime after the court adjourned, as the clerk was considerably behind with his work as he usually is at the end of the term.

A recess was here taken for dinner after which the direct examination of Judge Utz was continued by Mr. Hester as follows:

Q. In this same order of which you were speaking before lunch, you may state what, if anything, with reference to punishing these different parties for contempt besides the injunction you have already spoken of?

A. What order do you refer to?

Q. The one that was entered on Saturday?

A. The last day of court?

Q. The last day of the January term of court.

A. Yes sir, I think there was some provision of that kind in the order.

Q. Will you state to the court as near as you can what that provision was and against whom it was directed?

A. I think it was directed against the Indland Steel Co., the Day Time-Register Company and John C. Thurston.

Q. They were the petitioning creditors in these bankrupt proceedings?

A. Yes sir.

Q. And against whom else?

A. Against Mr. Pettus.

Q. Mr. Pettit?

A. Yes sir, if that is his name, the United States marshal and Mr. Connor.

Q. As receiver under appointment of this court?

A. Yes sir.

Q. In the order as first submitted to you, did the contempt provisions in that order also apply to the attorneys in the case?

A. Yes sir.

Q. That was Judge Hoerter and myself?

A. Yes sir.

Q. You know whether or not Judge Hoerter had ever had anything to do with this matter?

A. Nothing except I understood that Judge Hoerter and yourself were attorneys for the Inland Steel Co. That is all I can state.

Q. You may state to the court what Mr. Watts' attitude was in the matter when you stated to him that these contempt proceedings should not apply to the attorneys in the case, as to his being put out about it?

A. Well, he thought it ought to go in.

Q. Did he make any further remark to you after your remark from the Bench that you thought it ought not to go in?

A. I think Mr. Watts made some statements after that.

Q. When was it and when was it?

A. He said he thought that ought to remain in, but he was willing to leave it out.

Q. And it was stricken out a second time?

A. Yes sir.

Q. When did you first see Mr. Watts and Mr. Sachs after the return of Mr. Watts and Mr. Jewett from Indianapolis where they had attended the hearing of this case on the 16th and 17th of February?

A. On the afternoon of February 18th.

Q. That was Wednesday afternoon?

A. Yes sir.

Q. Where did you see them?

A. At my office.

Q. In the court house.

A. In the court house.

Q. Had you any arrangement to meet them there?

A. I think not.

Q. What time of day was that?

A. I think about two o'clock in the afternoon.

Q. Did you know they were coming?

A. My recollection is that Henry Jewett informed me sometime during the morning that they would be over sometime in the afternoon.

Q. How did he inform you of that?

A. I think he told me.

Q. Did you meet him?

A. Yes sir.

Q. Where did you see Mr. Jewett?

A. I think he was in my office on that morning.

Q. On some other business or on this?

A. I do not know what his business was.

Q. Did he have any other business there?

A. He did not state any.

Q. And he said that Mr. Watts and Mr. Sachs would see you in the afternoon in your office?

A. I am not certain that he mentioned Mr. Sach's name. I won't be certain of that, but I know he mentioned Mr. Watts.

Q. And it was in pursuance of that understanding that you were at your office that afternoon?

A. I would have been there anyway.

Q. It was in vacation?

A. Yes sir.

Q. Ordinarily, are you at your office in vacation?

A. Yes sir.

Q. What time did they come?

A. About 2.00 in the afternoon.

Q. Were they alone?

A. Yes sir—no, I beg your pardon, Henry Jewett came with them.

Q. Do you know where they came from?

A. No I could not state.

Q. Do you know where they had been before they came?

A. I do not.

Q. Did they say anything about where they had been?

A. Not to my recollection.

Q. What did they say was the purpose of their visit after they came in?

A. I do not know that they stated the purpose of their visit.

Q. What did you understand to be the purpose of their visit?

Question objected to by the defendants.

The Court: What did they say?

A. They came in, and as I recollect it, Mr. Watts—I think it was on that afternoon—he had a piece of brown paper that he had written a statement on in which he had stated that he had agreed at Indianapolis here with the court to advise the New Albany Trust Company to turn over the property to Mr. Connor the receiver of this court.

Q. That was stated in the paper?

A. Yes sir.

Q. Did he submit that to you?

A. Yes sir.

Q. Did you read it?

A. Yes sir.

Q. Then what was said?

A. I think Mr. Jewett also said that he wanted also to file a similar request.

Q. On behalf of whom?

A. On behalf of the New Albany Trust Company.

Q. As vice-president, I suppose?

A. He did not state, as to the vice-president. In behalf of the New Albany Trust Co. to turn over the property, but he didn't have the paper prepared, but that he would have it prepared probably by five o'clock.

Q. What was done or said about the paper submitted by Mr. Watts, by him or yourself?

A. There was nothing done that afternoon about it.

Q. What was said?

A. At that time?

Q. Yes.

A. Mr. Watts said that he wanted to comply with his promise to the judge of this court.

Q. And Mr. Sachs was there at the time?

A. Yes sir.

Q. What did he say?

A. Then the question as to the jurisdiction came up.

Q. Who brought that question up?

A. I think Mr. Sachs.

Q. What did he say?

A. Mr. Sachs was very positive in his opinion that the Floyd Circuit Court had jurisdiction over the property.

Q. Now judge let me ask you, did Mr. Sachs say that and discuss that question in an abstract way, or was it with a proposition that he had in mind.

Mr. Miller: If Your Honor please I object to that.

The Court: That is not proper; let him state what took place there and all that took place.

A. After that there was a general discussion, and Mr. Sachs did most of the talking.

Q. What did he say?

A. He simply said that the Floyd Circuit Court had jurisdiction over the property.

Q. Did anybody else discuss that legal proposition?

A. Yes I think that was Mr. Watts's opinion, and I think Mr. Jewett coincided with that view.

Q. Notwithstanding then, that Mr. Watts had filed a paper in which he offered to turn the property over and in which he sought to have the Floyd Circuit Court release its jurisdiction, he still maintained that the Floyd Circuit Court still had jurisdiction to retain the property?

A. I think so.

Q. How long did that meeting last?

A. Probably an hour.

Q. And were all these parties there during that time?

A. Yes sir.

Q. What else was said, judge?

A. I couldn't state that; that was the substance of what occurred.

Q. Were any other papers filed?

A. No, not that afternoon; Mr. Jewett informed me he thought he could not get that paper ready that afternoon.

Q. Was there any discussion as to steps to be taken afterwards?

A. None that I know of, except I will say this, that I stated to Mr. Jewett not to turn the property over, that I wanted to consider the matter further, and I wanted to consult some authorities.

Q. Did they submit any authorities that you remember?

A. No, I had some authorities.

Q. Were any authorities referred to you by either of the gentlemen at that time?

A. No.

Q. To refresh your recollection I will ask you whether anything was said about some cases, some bankruptcy cases that had been tried in which these parties represented the prevailing parties either in the circuit court of appeals for Kentucky or in the United States courts?

A. If I recollect that correctly, Mr. Hester, that was the next morning.

Q. Well did you have some arrangement with them in regard to meeting the next day?

A. No sir, I didn't have any except that I was to let Mr. Jewett know the next morning what was—what I thought about it in regard to turning over the property.

Q. Did you meet the gentlemen the next morning?

A. Yes.

Q. Where?

A. At my office.

Q. What time?

A. I should say about ten o'clock; now it was earlier than that; about nine-thirty, I expect.

Q. By what arrangement or notice was it that they came, if any?

A. Well I wouldn't state positive whether it was agreed or understood before they left that afternoon that they were to be back the next morning or not: I couldn't state that.

Q. Do you know anything about who arranged to have them come back the next morning?

A. Not unless it was agreed or understood there.

Q. You think it may have been understood before they left there?

Mr. Miller: I object to that.

A. I couldn't state positively about that. That is as near as I can state.

The Court: Come to the fact about what took place.

Q. Did you notify either of them any further that morning to come to your office?

A. No sir.

Q. Well who came?

A. I think Mr. Watts and Mr. Sachs came together, and then later Mr. Henry Jewett came in.

Q. How long after was it that Mr. Henry Jewett came in?

A. Well a few minutes; I don't know; it was not very long.

Q. Well what took place at that meeting?

A. I think there was very little said while Mr. Henry Jewett was there; I am not sure that even sat down; he walked in and I think about that time Mr. Sauer came in, the secretary of the New Albany Trust Company, and Mr. Henry Jewett said he would go back to the office, and his brother would come in and represent the trust company.

Q. He stayed but a short time?

A. A very short time.

Q. That left Sachs and Watts there with you alone?

A. No; I think Kelso was there

Q. Now what was said by either of these gentlemen in regard to turning over the property at that time if anything was said?

A. I do not remember of any discussion of it up to that time. We were waiting for Mr. Jewett to come over.

Q. C. L. Jewett?

A. Yes sir.

Q. Did he afterwards come?

A. Yes sir, in a short time.

Q. What did he say if anything about it?

A. He came in and Mr. Sauer was there and he told Mr. Sauer that he was wanted at the office of the trust company so Mr. Sauer left the room.

Q. Did he say what he was wanted for?

A. I don't recollect that he did.

Q. Then who carried on the discussion after Mr. Sauer left?

A. When Mr. Sauer left, Colonel Jewett made his statement that his brother had promised the judge of this court to turn over the property and that Mr. Watts had advised that course and had promised that to the judge of this court, and in good faith they were going to do it, and he talked at some length about the matter and during his statement of it, Mr. Sachs interrupted him, and asked him if the property had been turned over and Mr. Jewett made some remark that he did not want to be interrupted or something of that kind, and then Colonel Jewett completed his statement and got up and left.

Q. That was all he said?

A. Yes, sir, all that I recall.

Q. After Mr. Jewett left, what took place?

A. Then it was agreed by Mr. Watts and Mr. Sachs that Mr. Kelso was to take the receivership.

Q. That is take the receivership of the M. Zier and Company property in place of the New Albany Trust Company?

A. Yes sir.

Q. Had there been any resignation offered?

A. Colonel Jewett brought in the report asking to be permitted to make the report, and resigned.

Q. He did that on Thursday morning?

A. When he came in.

Q. That report was filed in writing, was it not?

A. And it was after that that Mr. Sachs asked if the property had been turned over?

A. While Colonel Jewett was making his statement is my recollection.

Q. And Jewett did not answer that?

A. He said, I think, what I said.

Q. But he did not answer the question whether the property had been turned over or not.

A. I don't think he did.

Q. Do you know whether it had been turned over or not at that time?

A. No sir, I do not.

Q. Do you know whether the New Albany Trust Company as receiver obtained the possesion of all the property that belonged to M. Zier & Co. and had it in possession at this time?

A. I do not quite understand the question.

Q. I mean do you know whether all of the property of M. Zier & Company, without any exception, was taken possession of and at that time held by the Trust Company as receiver of your court or if there was some property that they did not get, if you know?

A. Do you refer to the $9000?

Q. No. Did the receiver of your court upon its appointment get all of the property and assets of M. Zier and Company?

A. So far as I know. I was under that impression.

Q. Sauer left then, to go to the office of the Trust Co.?

A. Yes sir.

Q. And Jewett went back to his office and that left Kelso and Watts?

A. Yes sir.

Q. Now you may state further what discussion was had in regard to this property being turned over if there was anything said?

A. I think it was agreed there that Mr. Sachs—

Mr. Miller: I think I will ask the judge to say what was said:

The Court: Instead of saying "it was agreed," just state what was said and who said it.

A. I think Mr. Kelso asked Mr. Sachs to represent him as his attorney and Mr. Sachs agreed to do it.

By the Court:

Q. What else was said about that matter?

A. I think that was all as to that that I recall now.

Q. Was there any talk before that about the appointment of Mr. Kelso and that he should be appointed?

A. As I said a moment ago that was agreed.

Q. What was said by Mr. Sachs?

A. Mr. Sachs and Mr. Watts, both, as I recollect, stated that they would bear the expense whatever it might be for the receiver in the prosecution of any action.

Q. That was after it had been agreed on that Kelso should be appointed?

A. Yes sir.

Q. But what was said previous to that time, by either of these gentlemen about Kelso being appointed—how was Kelso's name first mentioned as a prospective receiver?

A. I think that came about in this way: on Wednesday afternoon, after Mr. Sachs, Mr. Watts and Henry Jewett were at my office, I called Mr. Kelso over the telephone and asked him if I could see him at his office the next morning at eight o'clock, that I wanted to talk to him, and he said he would be there, and the next morning I went to see Mr. Kelso at his office and told him—

Mr. Miller: What morning was that?

A. Thursday morning, the 19th, if I am correct as to the date. I went to his office and I told him I was of the opinion that the property ought not to be turned over by the New Albany Trust Company and that if it was I thought I would remove the Trust Company and I asked him if he would take the receivership.

Q. How did you arrive at that opinion?

A. From the statement that was made to me in the afternoon of Wednesday.

Q. By whom?

Q. From what Sachs and Watts said as to the law and from the examination I had made in the mean time.

Q. Then you met Kelso on the morning of the 19th at his office?

A. Yes sir.

Q. Did you then proceed to your office?

A. No sir, we went out Pearl Street and we both stopped in the office of the New Albany Trust Company and saw Mr. Sauer and Mr. Connor both there.

Q. Did you remain there any length of time?

A. No sir, only a moment.

Q. You did not know Mr. Connor's purpose in being there?

A. No sir. I only bid him the time of day.

Q. Did you and Mr. Kelso go to your office?

A. No sir, I went to my office and Mr. Kelso had an errand out the street and came in later.

Q. When you got to your office had Mr. Sachs and Mr. Watts reached there?

A. No sir, not for some time afterwards.

Q. They afterwards came in?

A. Yes sir.

Q. What time was it that these gentlemen came in that morning?

A. I said I thought it was about nine-thirty in the morning.

Q. Did Mr. Watts and Mr. Sachs come in together?

A. That is my recollection.

Q. What was said that morning in regard to the subsequent proceedings had in connection with this receivership?

A. I think I have stated that unless you can direct my attention to something else.

Q. How long did you remain there at your office that morning?

A. Until nearly noon I think.

By the Court:

Q. Did I understand you to say that at morning, on Thursday morning, Mr. Watts and Mr. Sachs agreed to bear the expenses of Mr. Kelso in his being appointed receiver and in his attempt to get back the property from the receiver of this court?

A. I do not know whether anything was said about the attempt to get back, but aside from that, the statement is correct.

Q. That is, they agreed to bear the expenses to back him, to pay the expenses of the receivership if he accepted it?

A. Yes sir.

Q. Did Mr. Watts and Mr. Sachs both make that promise?

A. That is my recollection.

Q. Did you meet these gentlemen that afternoon?

A. I think I did. I know I met Mr. Sachs, but I would not be positive as to Mr. Watts.

Q. At what hour?

A. Sometime about two o'clock.

Q. Where was that meeting?

A. At my office.

Q. Tell the court what took place there?

A. I think the conversation at that time was between Mr. Sachs and Mr. Kelso as to making the order removing the Trust Company and appointing him.

Q. What was done in that respect?

A. That order was made.

Q. (By the Court) What was said between Mr. Sachs and Mr. Watts and Mr. Kelso?

A. I cannot say all that was said; I can only state the substance.

Q. Give the substance of it?

A. They talked about the removal of the New Albany Trust Co., and Mr. Kelso's appointment, and the order which should be made, citing the Trust Co. to appear and show cause why they should not be punished for contempt of court in turning over the property?

By Mr. Hester:

Q. Can you state who suggested that the Trust Co. should be cited, or was there any such suggestion made?

A. Yes sir, I think so.

Q. Who made that?

A. Mr. Sachs.

Q. That the Trust Company should be cited for contempt?

A. Yes sir.

Q. Was there anything said about Mr. Watts being cited for contempt?

A. Not then, I think there was later.

Q. When was that?

A. Sometime later in the evening.

Q. Where did that take place?

A. My recollection is that was at Mr. Kelso's office.

Q. Who was present at that time?

A. I think Mr. Kelso and Mr. Sachs and myself.

Q. Was Mr. Watts there?

A. I would not be positive as to that.

Q. Who suggested that Mr. Watts be proceeded against for contempt?

A. Mr. Sachs.

Q. Was a citation issued afterwards?

A. Yes sir.

Q. As a result of that suggestion?

A. Not wholly.

The Court: What was not wholly?

Mr. Hester: That it was not issued as a result of that suggestion wholly.

A. I was considering the matter if the Trust Co. could be cited, I was rather of the opinion that Watts also should be cited.

Q. You say you do not remember whether Mr. Watts was present then or not?

A. I would not state positively.

Q. Did you have another meeting on Friday with these gentlemen?

A. Yes sir, I think so.

Q. Was that in the morning?

A. That is my recollection.

Q. Where was that held?

A. In my office.

Q. Who were present?

A. Mr. Kelso was there, Mr. Sachs was there and Mr. Watts was there a part of the time.

Q. Had Mr. Watts been served with a citation for contempt at that time?

A. I think he had.

Q. What was said by either Mr. Watts or Mr. Sachs as near as you can recollect at that meeting?

A. I do not recall anything now that Mr. Watts said, unless my attentiou were directed to it.

Q. By anyone else, if you can remember?

A. There was some talk between Mr. Kelso and Mr. Watts as to the proceedings that should be had for the purpose of recovering this property.

Q. What did Mr. Kelso say about that?

Mr. Fairleigh: You don't say Mr. Watts was there.

A. I think Mr. Watts was there sometime in the morning.

Q. But at this time was anything said by Mr. Watts?

A. I do not recall that Mr. Watts said anything.

By Mr. Miller:

Q. What day was this?

A. Friday.

By the Court:

Q. What did Mr. Sachs say with reference to the receiver getting possession of the property?

A. I can only state in substance what he said. I can not use the words that he said.

Q. State the substance?

A. That after the Trust Co. was removed, they were to make a demand for the property on Mr. Connor and if it was not turned over then send the sheriff with a writ and take the property.

Q. Who suggested that?

A. I would not say who suggested that, whether Mr. Kelso made the statement or whether Mr. Sachs made the statement.

Q. Was Mr. Sachs present when it was made?

A. Yes, sir.

Q. By Mr. Hester: Was he representing Mr. Kelso at that time?

A. Yes, sir; acting as Mr. Kelso's attorney.

Q. Mr. Kelso was acting as receiver?

A. Yes, sir.

Q. Had he qualified as receiver then?

A. I think not. I think the papers were being prepared at that time or were in the course of preparation.

Q. Do you know what time that day he did qualify?

A. Sometime in the afternoon.

Q. Was he required to give bond?

A. Yes, sir.

Q. You think the bond was filed sometime in the afternoon?

A. Yes, sir.

Q. You approved the bond?

A. Yes, sir.

Q. Who brought the bond to you for approval?

A. Yes sir, Mr. Kelso.

Q. Was Mr. Sachs there then?

A. Yes sir.

Q. He was present?

A. Yes sir.

Q. When was that?

A. I am not positive whether that was on Thursday afternoon or Friday afternoon, the record there will show.

Q. Did these gentlemen remain at your office on Friday afternoon?

A. A very short time and then they went to Mr. Kelso's office. Mr. Sachs and Mr. Kelso went to his office and I saw nothing more of them until late in the evening.

Q. Where was Mr. Watts during this time?

A. He was about the city.

Q. New Albany?

A. He came into my office in the afternoon between two and three o'clock Mr. Watts did.

Q. What was his business there, what did he do or say?

A. He wanted to get an extension of time for filing his response. He was there when Col. Jewett came in with Mr. Mosier.

Q. Mr. Jewett came with Mr. Mosier the president of the Trust Co?

A. Yes sir.

Q. He came in for that purpose?

A. He came in for the purpose of asking that I grant him further time to prepare a response.

Q. That was the response of the Trust Co. to the citation for contempt?

A. Yes sir.

Q. Mr. Watts was there and asked for further time?

A. Mr. Watts was there when Mr. Jewett came in.

Q. Were they granted further time?

A. Yes sir.

Q. Until when?

A. Until the following Wednesday.

Q. Did you see anything more of Mr. Watts and Sachs that day?

A. I do not know whether I saw anything more of Mr. Watts or not. I saw Mr. Sachs at Mr. Kelso's office late that evening.

By the Court:

Q. What day was that?

A. Friday evening, I should judge about half-past five. They said they would have the papers ready and I was anxious to go home and went to Mr. Kelso's office to see whether they had the papers prepared.

Q. Were the papers being prepared then?

A. Yes sir.

Q. What papers?

A. The papers in regard to retaking the property.

Q. Retaking possession from Mr. Connor?

A. Yes sir.

Q. Do you know what papers were being prepared?

A. No sir, not at that time.

Q. Who were preparing those papers?

A. I could not say.

Q. Who were there?

A. Mr. Kelso and Mr. Sachs.

Q. By Mr. Hester: Did they have a stenographer?

A. Mr. Kelso had, but I did not notice whether she was working on the papers or not.

Q. Had they been prepared or finished when you got there?

A. No sir.

Q. Do you wait for sometime for them?

A. I think I waited some few minutes, fifteen or twenty minutes.

Q. You were there I suppose for the purpose of signing the order?

A. Yes sir.

Q. While you were there state whether you signed the order?

A. Not there.

Q. Where was the order signed?

A. At the court house.

Q. Did Mr. Sachs, Mr. Kelso and yourself then go back to the court house?

A. I would not be positive about that whether they went back with me or not. I do not think they got all the papers done. I know I came back after supper for the purpose of signing some of the papers they had not prepared.

Q. What time was that?

A. I think about seven o'clock.

Q. Who was there at your office at that time?

A. That was not in my office. It was in the clerk's office.

Q. Who was in the clerk's office?

A. The deputy clerk was there and later I think Mr. Kelso came in.

Q. Was Mr. Sachs there that evening?

A. No sir, I think not. I do not remember of seeing Mr. Sachs there.

By the court:

Q. After supper?

A. No sir.

By Mr. Hester:

Q. Did you remain there any longer than long enough to sign the order.

A. I was only there a short time.

Q. Did you remain until after the property was taken?

A. Yes I think I did.

Q. To whom was the writ of resitution or whatever it was delivered?

A. To the sheriff, I think.

Q. Mr. Morris?

A. Yes sir.

Q. Do you know whether he came back to the court-house in regard to that matter that evening?

A. I am inclined to think he did.

Q. For what purpose if you know?

A. He came back to report that Mr. Connor would not turn the property over, I suppose, I did not know what his purpose was.

Q. What did he say or do?

A. I did not hear him say anything. I know that Mr. Kelso reported the fact to me that Mr. Connor refused to turn the property over, and then I made the order directing the sheriff to take it.

Q. Did you talk with Mr. Morris the sheriff?

A. I don't think I did.

Q. You made the order directing the sheriff to take it?

A. Yes sir.

Q. Did he come back after that?

A. Yes sir.

Q. How long afterwards?

A. Probably thirty minutes.

Q. For what purpose did he come back or what did he say when he did come back?

A. I think he stated that he had taken possession of the property but that there was some one in the plant yet.

Q. Did he tell you who it was, or what kind of an officer?

A. No sir, I don't think he stated that, except as I gathered from what he said that it was a watchman.

Q. Of whom?

A. Of Mr. Connor.

Q. He said that Mr. Connor's watchman was in charge?

A. That is the way I understood it.

Q. In possession of the plant. Did he get any further instructions?

A. Yes sir.

Q. What was said in regard to that?

A. Either myself or Mr. Kelso told him he would have to have everyone out of there that was in there before the court could turn it over to Mr. Kelso?

Q. What directions did he get in regard to obtaining complete possession of it. I think that was all that was said.

A. Yes sir.

Q. He left then?

A. Yes sir.

Q. Did he return again?

A. I don't remember.

Q. Do you know whether he did deliver complete possession of the property to Mr. Kelso?

A. I don't know about that.

Q. Do you know anything about the insolvency of M. Zier and Company previous to the complaint for a receivership being filed by Ryerson & Son?

A. No sir I did not.

Q. Did you know of any payments of money that had been made by—

Mr. Miller: I cannot see how his knowledge is competent.

The Court: I am not so sure that it is, Mr. Miller. Go on something else.

Q. You have related about all the steps that occur up to the time that this property was delivered by the sheriff to Mr. Kelso under the writ issued from your court.

A. As far as I recall it now.

Q. Do you remember when the citations were served in this case on the parties there in Floyd County, do you remember what date that was?

A. I think the citation was on the New Albany Trust Co —I know Mr. Watts was served on the 30th.

Q. I made the citations issued by this Court.

A. I think that was on Saturday evening.

Q. Did you have any further conference with these gentlemen after that?

The Court: What gentlemen?

Mr. Hester: Mr. Watts, Mr. Sachs and Mr. Kelso.

A. Yes, on Sunday morning.

Q. Where was that conference had?

A. At Mr. Kelso's office.

Q. By what arrangement, if you know?

A. Who notified—

The Court: No matter about that. Come to the meeting.

Q. I would like to know how they came to be there?

A. I think they were notified by telephone.

Q. What was said at that meeting?

A. The subject of that meeting was with reference to preparing a response for all the parties cited by this Court.

By the Court:

Q. Who was present?

A. Mr. Watts was there, and Mr. Sachs was there and Mr. Kelso was there and I was there.

Q. What did Mr. Sachs and Mr. Watts say about responses and appearing here?

A. I think, my recollection of it is, they said they would prepare the responses and that they would all appear here without reference to the manner of service, as to Mr. Sachs and Mr. Watts. They had not been served at that time.

Mr. Miller:

Q. This is on Sunday?

A. Yes sir.

By Mr. Hester:

Q. Was anything said about who should prepare the responses, or did he say about that?

A. I can not say as to that.

Q. What time did you separate that Sunday morning?

A. We were there an hour or an hour and a quarter or something like that.

Q. Did you arrange for another meeting next day?

A. Yes sir, Mr. Kelso and Mr. Sachs and Mr. Watts arranged to go to Mr. Sachs' office next morning to draw the responses.

By the Court:

Q. Where?

A. At Mr. Sachs' office in Louisville.

By Mr. Hester:

Q. Were you present at that meeting?

A. I went to Mr. Sachs' office in the afternoon, Monday afternoon.

Q. Who was there then?

A. Mr. Sachs and Mr. Kelso. Neither of them was at Mr. Sachs' office when I went in. They were at lunch as I was informed.

Q. They afterwards came in and you four were at that meeting?

A. Mr. Watts came in response to a telephone message from Mr. Sachs or one of Mr. Sachs' brothers.

Q. What was done on that Monday afternoon about preparing the responses.

A. Nothing except a discussion of the law.

Q. Were the responses prepared?

A. They were not.

Q. Was anything said by Mr. Kelso in regard to these gentlemen furnishing money to carry on this Receivership that he was involved in?

A. Yes, sir.

Q. What was that?

A. Mr. Kelso wanted to know late in the afternoon about four o'clock after stating the agreement that had been made originally, who was going to bear the expenses of it and Mr. Sachs said he did not think any lawyer ought to bear expenses of that kind.

Q. By the Court. Did I understand you to testify awhile ago that Mr. Sachs originally agreed to bear those expenses?

A. Yes, sir.

Q. By Mr. Hester. Was anything said by any of the other parties, either Watts or Kelso, further about the expenses of the Receivership?

A. Not that I recall now.

Q. Do you recall whether or not they reached a definite determination or anything was said about their determination not to pay anything or furnish any money or funds?

A. I think I have stated all that I recollect that occurred on that subject. Mr. Kelso then went to the telegraph office to telegraph to some attorney to appear for him.

Q. How much longer did you remain in Mr. Sachs' office that afternoon?

A. Probably a half an hour.

Q. Then you went back to New Albany?

A. Yes, sir—Mr. Kelso and I went back.

Q. You were not present in Louisville at any other meeting after that?

A. No sir.

Q. By the Court: What was said at that time about them coming up here with Mr. Kelso and the other persons cited on Monday afternoon—what did Mr. Watts and Mr. Sachs say about that if anything?

A. I recollect that Mr. Sachs said he would not come here, that he would sooner go to Jamaica or some place—

By the Court: Speak that out so that I can hear it.

A. He said that he would not come here, that he would sooner go to Jamaica or California rather than testify against his friend Watts, as I remember.

Q. By Mr. Hester: Was that stated before Mr. Kelso and Mr. Watts?

A. Yes sir.

Q. What did Mr. Watts say in answer to that?

A. I don't know that Mr. Watts said anything in answer to it.

Q. Is that the substance of that conversation that afternoon?

A. As near as I can recall.

Q. By Mr. Miller: Was that Monday afternoon?

A. Yes sir.

Q. By Mr. Hester: What, if anything, did Mr. Watts say about coming to Indianapolis?

A. Mr. Watts talked about whether he ought to come. He said he felt like he ought to come and yet he said he did not want to do anything in view of what had occurred on the 10th and 17th; that he did not want to do anything that would jeopardize the officers cited to appear and Mr. Kelso.

Q. That was in connection with his coming up here that he said that?

A. Yes sir.

Q. Was Mr. Watts talking about coming to Indianapolis then as one of the attorneys for Mr. Kelso or these other officers or individually in answer to the citation directed against him?

A. No sir; he was talking with reference to coming in regard to the citation that had been issued against him and Mr. Sachs.

By the Court:

Q. You did not appoint Mr. Kelso as receiver until after the Trust Company had turned the property over to Mr. Connor, the receiver of this Court?

A. No sir.

Q. And you appointed him receiver at that time for the purpose of retaking the property from the receiver of this Court?

A. That was my understanding of it.

Q. You did that upon the advice and suggestion of whom?

A. On the advice of Mr. Sachs and on the information I had in regard to the law.

Q. What did Mr. Watts have to do with that proposition?

A. I would not state that he had anything to do except that agreement in regard to taking care of the expenses.

CROSS-EXAMINED BY MR. FAIRLEIGH.

Q. Will you be good enough to tell the court when you first saw Mr. Sachs and Mr. Watts after their return from Indianapolis after their appearance here before the Judge of this court on the 16th and 17th—I mean after the appearance of Mr. Watts and Mr. Jewett.

A. Two o'clock of the afternoon of the 18th.

Q. At that meeting Mr. Watts had prepared a brown paper statement of what had occurred here before Judge Anderson?

A. Yes sir.

Q. Mr. Jewett appeared also at the same time?

A. Yes sir.

Q. He had no statement prepared?

A. Not at that time.

Q. It was understood that next morning the statement of Mr. Watts as attorney for the New Albany Trust Company as receiver, and the statement of the New Albany Trust Company Receiver would both be filed before you? was that the idea?

A. It was understood and stated by Mr. Jewett that afternoon that he thought he would be able to get the paper of the Trust Company ready that afternoon as I recollect it.

Q. They were not filed that afternoon?

A. I could not state as to the actual filing. I know the Trust Company did not get theirs ready until the next morning.

Q. They were both filed formally before you the next morning.

A. I would not state positively whether Mr. Watts, was filed Wednesday afternoon or Thursday morning?

Q. The record discloses the fact that it was filed Thursday morning?

A. Whatever it is.

Q. What time did you see Mr. Watts and Mr. Sachs on Thursday morning?

A. It was about 9.30, I guess along there, I don't remember the exact time.

Q. Had you seen Mr. Kelso before you saw them that morning?

A. Yes, sir.

Q. Had you telephoned Mr. Kelso the evening before that you wanted to see him next morning?

A. Yes, sir.

Q. Did Mr. Sachs and Mr. Watts know that you were going to telephone to Mr. Kelso that evening before they left?

A. No, sir; they did not.

Q. You telephoned to Mr. Kelso on your own motion?

A. Yes, sir.

Q. Without any consultation with them or either of them about that fact?

A. Yes, sir.

Q. What did you want to see Kelso for?

A. I wanted to talk with him with reference to whether the Trust Company ought to be permitted to resign or the property ought to be turned over. He was a stockholder in the New Albany Trust Company at that time.

Q. Accordingly you saw him the next morning, which was Thursday morning, at his office about eight o'clock?

A. Yes, sir.

Q. You did talk with him about that subject?

A. Yes, sir.

Q. What did he tell you?

A. He said he would take the Receivership.

Q. It was arranged between you and Mr. Kelso alone?

A. So far as I know.

Q. That determination was made by you at that time?

A. Yes, sir.

Q. That was your conclusion of the whole matter?

A. As I understood it.

Q. When Watts and Sachs arrived Thursday morning that conclusion had been reached by you independently of them?

A. Yes, sir.

Q. They had no connection with the formation of that judgment, had they?

A. Not that I know of.

Q. Had they suggested or advised in any way the appointment of Mr. Kelso?

A. No sir, not to me.

Q. By the Court. What do you mean by that that they had not advised Kelso as distinguished from any other person or do you mean to swear that they did not advise the appointment of any receiver at all?

A. I mean that they did not tell me that they wanted Kelso appointed Receiver.

Q. By Mr. Fairleigh. Or anybody else?

A. So far as I know.

Q. They did not suggest the name of anybody?

A. No sir.

Q. Let us get at that so as to have it clear. Up to that time had Mr. Watts or Mr. Sachs in any way advised the appointment of another Receiver?

A. Up to what time do you refer?

Q. Up to the time you went to Kelso's office on the morning of Thursday?

A. No sir.

Q. That was an independent judgment reached by you?

A. Yes sir.

Q. How long did you stay with Mr. Kelso that morning?

A. Only a few minutes. I don't know just how long.

Q. Did he come over to your office that morning afterwards?

A. Yes sir.

Q. Did he arrive there before or after Mr. Sachs and Mr. Watts arrived there?

A. My recollection is he came before.

Q. Was he with you when Mr. Sachs and Mr. Watts came into your office?

A. That is my recollection.

Q. Had you and Mr. Kelso been discussing this matter there in your office before the arrival of Mr. Sachs and Mr. Watts?

A. I would not state whether we had any discussion of it there or not.

Q. The thing had been concluded, you determined what to do?

A. So understood it.

Q. What action was taken by you on those petitions up to that time?

A. I think I stated that I did not think the property ought to be turned over and that they might put in the response what they desired to but that I would neither expunge the record that was made on the 14th nor would I permit the Trust Company to resign.

Q. What was the purpose of expunging the record or certain parts of it—was any statement made in open court about that?

A. Yes, sir—Mr. Watts stated Wednesday afternoon that he had promished to advise the turning over of the property. I am not entirely clear but I think he said he had promised to have the record made on the 14th of February expunged.

By the Court. I want to understand that. What was said about expunging the record?

A. I say am not entirely clear on that.

Q. I want you to be clear. I know what the fact is and I want to know what he said about it?

A. I know this: I want the entire record made—the order made on the 14th of February expunged from the record.

Q. Did he tell you that this Court had asked that to be done?

A. As I say I would not state positively about that.

Q. By Mr. Fairleigh. How long did Mr. Sachs and Mr. Watts stay in your office after that matter had been determined?

A. What matter do you refer to?

Q. After you expressed disapprobation of what they had done?

A. As I stated in the direct examination until I think something like 11 o'clock or along there. I am not sure.

Q. Was there anything said there about the appointment of Mr. Kelso as Receiver after that time?

A. I could not state.

Q. You do not remember?

A. No, sir.

Q. They left your office about 11 o'clock as you remember it?

A. Sometime along there, I think.

Q. Did they afterwards return to your office during that day as you remember?

A. Mr. Sachs did but I don't know for sure whether Mr. Watts did or not.

Q. This is Thursday: Did Mr. Sachs return Thursday to your office?

A. Yes—that is my recollection.

Q. Do you know for what purpose?

A. I could not state the purpose.

Q. Have you any recollection at all of what he said or did after he returned to your office?

A. I think there was some talk between him and Mr. Kelso as to the situation—as to the citation that was to be issued against the Trust Company.

Q. Was Mr. Kelso there?

A. I think he was.

Q. Do you know how long they were at your office that afternoon?

A. I could not state that.

Q. They returned to New Albany on Friday morning and came to your office?

A. Yes, sir.

Q. What was the purpose of their coming there that morning, do you remember?

A. No, sir—I could not state the purpose.

Q. Do you remember of telephoning to Mr. Sachs on Thursday evening and asking him and Mr. Watts to come over to your court or office on Friday morning?

A. No, sir; I have no recollection whatever of it.

Q. You have no recollection whether you did or did not?

A. I don't think I did.

Q. They did come to your office on Friday morning as I understand.

A. Yes, sir.

Q. About what time, do you remember?

A. About 10 o'clock.

Q. Was Mr. Kelso there when they came?

A. I don't know whether he was or not. If he was not there, then he came in shortly afterwards. I know that Mr. Kelso was there at some time during a part of the morning.

Q. When was the order entered appointing Mr. Kelso Receiver—was that on Friday?

A. I don't know whether it was Thursday afternoon or Friday. I could not state but I am rather of the impression that it was on Thursday.

Q. What is the date of the appointment of Mr. Kelso?

By the Court: Friday the 20th.

A. Yes; I think that is right.

By Mr. LaFollette: Yes it was on the 20th that his bond was filed.

A. That is the date of the appointment.

Q. When did you tell Mr. Watts and Sachs, if you told them at all that you had determined to appoint Mr. Kelso Receiver?

A. I don't know that I have stated that to them at all. I may have done so.

Q. Who drew the order appointing Mr. Kelso Receiver?

A. I could not state that.

Q. Was it drawn in your presence?

A. I do not know that.

Q. What proceedings were in contemplation by anybody at the time Mr. Kelso was appointed? What proceedings were in contemplation to be taken by the Receiver?

A. He was to take the property.

Q. How?

A. How?

Q. Yes. Was the method of taking it discussed by anybody?

A. I think the method was discussed between Mr. Kelso and Mr. Sachs.

Q. Was there anything said about intervening in this Court by Mr. Kelso the Receiver?

A. Not that I recall now.

Q. Was any discussion had about appearing in this court and filing an intervening petition in the bankruptcy case and submitting to this court the question of where the possession of the property rightfully belonged?

A. There may have been. I won't state positively.

By the Court: Of course, a great many things may have been?

A. I say that I cannot state as to that.

Q. When was it determined to issue a writ?

A. On Friday.

Q. How late?

A. I don't know whether that was in the morning or the afternoon.

Q. Was it not late in the afternoon, as you remember it?

A. It was not late in the afternoon. I think it was done in my presence early in the afternoon.

Q. Kelso by order the of appointment was directed to demand of Mr. Connor, the Receiver, possession of this property of M. Zier & Co. and of the New Albany Trust Co. also?

A. Yes, sir.

Q. And upon default on the part of either, Kelso was directed to report that fact to the Court?

A. Yes, sir.

Q. The order of appointment went no farther than that?

A. That is my recollection.

Q. The order for the issuance of a writ was made thereafter therefore?

A. Yes, sir.

Q. Now who was present when that order was determined upon?

A. I could not state that.

Q. Is it not true that neither Watts nor Sachs was present?

A. My recollection is that Sachs was there with Mr. Kelso and was advising the court. That is all I can state as to that.

Q. At that time?

A. Yes, sir.

By the Court: With reference to that matter?

A. Yes, sir.

Q. Watts was not present as you remember?

A. I would not state that he was there. He may have been there. He was in New Albany.

Q. Are you certain that Mr. Sachs was there?

A. When that matter was being discussed?

Q. After Kelso reported back that he could not obtain the possession of the property?

A. I do not know whether he was when he reported back that fact but the course that was pursued, I know that Mr. Sachs knew and advised with reference to that.

Q. You are not certain that Sachs was there at the time Kelso reported back to you that the demand had been refused?

A. No sir—I could not state that.

Q. Is it not your best impression that ye was not there?

A. I could not state; I do not know.

Q. That was late in the afternoon, did you say?

A. I think it was.

Q. Could you now say how late it was, whether it was five or six o'clock?

A. No, I could not. It was somewhere along there, I think.

Q. Nevertheless upon that report made by Mr. Kelso that he was not able to obtain the property from the New Albany Trust Co. or Connor you did direct the entry of any order directing the writ to be issued and given to the sheriff?

A. Yes, sir.

Q. Was that put in the hands of the Sheriff?

A. Yes sir.

Q. By whom?

A. I do not know who handed it to him. The writ was prepared. Whether Mr. Kelso delivered it in person or whether the Clerk carried it to him, I do not know.

Q. By the Court: Did I understand you to say that you entered the order directing the sheriff to do that?

A. Yes.

Q. Of record?

A. Yes sir.

Q. Was the court in session?

A. I signed the order in vacation as we always do?

Q. It was not a court order?

A. It was in vacation.

Q. You were not stiting as the Floyd Circuit Court?

A. As the Judge of the Floyd Circuit Court.

Q. It was during vacation and you were not sitting—

A. The court was not in session, no sir.

Q. And under that writ the property was taken as you have heretofore related and turned over to Mr. Kelso?

A. Yes sir.

Q. By Mr. Fairleigh: Did Mr. Kelso report back to you in writing?

A. Yes sir.

Q. That he had been unable to get possession of the property?

A. Yes sir.

Q. Do you know who prepared that paper or writ?

A. I don't know who prepared it.

Q. Was it in typewriting, do you remember?

A. That is my recollection.

Q. Signed by Mr. Kelso?

A. Yes sir.

Q. You have spoken about some agreement to pay costs and expenses. What day was that conversation in which that occured?

A. On Thursday morning.

Q. What was the scope and real purpose of that? I have no doubt that the court would like to know that?

A. That was the condition on which Mr. Kelso stated to them that he would take the Receivership.

Q. I understood you to say that he had agreed to take it—you had agreed upon that before they came over?

A. That is true.

Q. That was an independent determination of yours before they arrived on Thursday morning?

A. Yes, sir.

Q. How did this discussion about expenses come up—what induced it?

A. I cannot state except as I recall it. Kelso asked Watts and Sachs if he took the Receivership if they would protect him against any costs.

Q. What was he to do that would incur costs: that is what I want to get at. What costs were in the minds of the parties at the time?

A. I do not know what he said as to that.

Q. Do you remember of anything being said about filing pleadings in this court and court costs and all that sort of thing?

A. No sir—I do not.

Q. You would not undertake to say what the scope of that agreement to pay costs was?

A. No, sir—I do not recall now.

Q. It was a casual conversation between the parties?

A. No, sir; it was a question of whether Kelso would take the Receivership.

Q. The conversation was after he had agreed to take it and after you had determined to appoint him?

A. Yes, sir. In that connection, I think it is proper to say that my recollection now is that Kelso stated to me—

By Mr. Fairleigh: In the presence of Mr. Watts and Mr. Sachs?

By the Court: Finish you statement anyhow?

A. That that was the condition on which he would take it.

Q. By Mr. Kealing: At his office when you first talked about it?

A. Yes, sir.

Q. By Mr. Hester: What would be the condition?

A. That he was to be at no expense.

By Mr. Fairleigh: Kelso said that he would not undertake it except that he would be guaranteed against any cost personal to himself?

A. Yes, sir.

Q. That was on the information that all of the property had passed out of the hands of the Receiver?

A. Yes, sir.

Q. And he had no funds to pay costs?

A. Yes, sir.

Q. Was there any statement about what amount of costs there would be?

A. I do not recall it; there may have been.

Q. Who was the attorney for that Inland Steel Company in that Ryerson litigation down in the Floyd Circuit Court?

A. Hoerter and Hester.

Q. Who filed the petition in bankruptcy?

A. Mr. Hester filed the petition. I do not know whose name appears on it as attorney.

Q. The petition in involuntary bankruptcy on behalf of the Inland Steel Company Mr. Hester filed?

A. Yes, sir; he filed it.

Mr. Fairleigh: That is a record fact?

The Court: Yes; and I do not think it is material.

Q. Who filed the intervening petition of Connor Receiver of this court in the suit down in the Floyd Circuit Court as the attorney for Mr. Connor?

A. Mr. George Hester filed the petition.

Cross-examined by Mr. Smith for defendant Sachs.

Q. At the time you say these parties were over there on Wednesday afternoon how long did they remain—Sachs and Watts?

A. Probably a little more than an hour. Something like that.

Q. Was Mr. Kelso in your office with them during the entire time they were there?

A. He was not there at all Wednesday afternoon.

Q. Kelso was not at your office at all?

A. No, sir.

Q. Did you talk with Watts and Sachs with reference to this trouble they had had up here?

A. I think that was stated when Watts and Jewett both stated what promise they had made to turn the property over.

Q. Jewett did not undertake to make any report on Thursday?

A. He said that he would, that he could get it ready by five o'clock.

Q. They did not remain there until five o'clock to see whether Jewett would bring the report?

A. I think Mr. Jewett informed me that he could not get it ready later on. They did not wait.

Q. You took no action on that day did you?

A. None except to say to Mr. Jewett not to turn the property over until the next morning until I could think of it.

Q. You took no action in regard to any matter relating to Watts and Sachs upon that Wednesday?

A. No, sir.

Q. Did you not tell Watts and Sachs or both of them at the time they left there on Wednesday afternoon that you wanted a meeting of all of the attorneys on Thursday morning and for them to go by and tell Kelso to have them there?

A. No, sir.

Q. You say you did not do that?

A. No, sir.

Q. You are quite sure about that?

A. Yes, sir; I am quite sure.

Q. You are sure you did not tell them to go by and tell Kelso to have the other attorneys there Wednesday morning?

A. I certainly did not?

Q. Do you know the occasion of their returning Thursday morning?

A. No, sir—I would not state as to that positively.

Q. Don't you know that you instructed them on that Wednesday afternoon to return Thursday morning?

A. I do not know whether I instructed them to return. I know that I stated that I would determine the matter in the morning at nine o'clock as to what action I would take or what conclusion I would come to as to whether the Trust Company should turn over the property.

Q. Did you not tell them you would make an engagement for Kelso to come over and see those two next morning?

A. No.

Q. You did make an engagement with Mr. Kelso to come to your office at eight o'clock?

A. No sir; I made an engagement to meet him at his office.

Q. That was an hour before nine o'clock when you said you would report what action you would take?

A. Yes, sir.

Q. You didn't see these parties any more after they left your office at an hour after three until they returned next morning about nine-thirty?

A. I think not.

Q. That was on Thursday morning that they returned?

A. Yes, sir.

Q. Mr. Kelso was there at the time they came in?

A. That is my recollection.

Q. Did I understand you at that time to say that there had been nothing said between you and Mr. Sachs and Mr. Watts in regard to the removal of the trust company and the appointment of another receiver?

A. That is my recollection.

Q. You had agreed and Kelso had accepted the appointment, as you say now, conditionally that the costs were arranged?

A. Yes sir?

Q. When was the conversation in regard to the arrangement about costs first mentioned with reference to the time of their coming next morning—Thursday morning?

A. After I had stated to the trust company and after I had stated to Mr. Watts that I would not reply to the requests that they asked of me.

Q. That was the next thing in order, the question of Mr. Kelso being secured as against any costs that he might incur?

A. Yes sir.

Q. Then Mr. Kelso up that time hadn't said to Mr. Sachs that I will employ you as attorney had he?

A. I think not.

Q. What time of the day did that occur with reference to the time that they got there in the morning?

A. It was a very short time, for there was a discussion as to Mr. Kelso's taking the receivership and Mr. Sachs to act as Kr. Kelso's attorney.

Q. Who was present, judge, at the time Mr. Sachs made that agreement with Mr. Kelso?

A. Mr. Watts, Mr. Sachs, Mr. Kelso and myself.

Q. Just you four?

A. That is the way I recall it now.

Q. And that was in your office at the court house?

A. Yes sir.

Q. That was a short while after they came over there and after you had stated to them that Mr. Kelso had agreed to accept the appointment?

A. I don't know whether I stated it to them or not, or whether that was understood; I don't know about that.

Q. You had no conversation with them by which they could arrive at that understanding, that is the understanding by which you were to—

A. (Interrupting) I don't know what their understanding with Mr. Kelso was, or whether they had any.

Q. Had they had any conference with Mr. Kelso since they left your office that afternoon at all?

A. I don't recall now whether they did or didn't.

Q. What time did they leave on that Thursday, Mr. Sachs and Mr. Watts?

A. As I stated, I think Mr. Sachs and Mr. Kelso were there, it was something like a little after 11, along there; I don't know just when Mr. Watts left, I couldn't state; Mr. Sachs came back in the afternoon, and whether Mr. Watts came back I couldn't state; they may have done so.

Q. You were very angry, judge, at the time you heard of the action of the court here were you not?

A. No sir; I wouldn't state that I was angry.

Q. Well you were very much grieved over the turn that matters had taken?

A. I felt that the trust company, after talking with Mr Sachs about the matter, and after the discussion on Wednesday afternoon, and after the examination of the authorities that I had, I concluded that the trust company hadn't treated me right in the matter, and that Mr. Watts hadn't.

Q. Well you knew Mr. Sachs was Mr. Watts's friend did you not?

A. No I knew nothing about the relations between Mr. Sachs and Mr. Watts previous to that time.

Q. How long had you known Mr. Sachs previous to that time?

A. I met Mr. Sachs for the first time on Thursday morning, the 19th, I think it was; no on Wednesday afternoon.

Q. Wednesday afternoon?

A. Yes sir.

Q. Didn't they leave there Wednesday afternoon, and come back there Friday morning?

A. No sir.

Q. Thursday morning, I mean?

A. Yes sir that is correct.

Q. And was Mr. Jewett's report filed on Thursday at all?

A. You mean the request to be permitted to resign the trust?

Q. No sir I am talking now of his report as to the assets that came to his hands and the disposition of it

A. No that wasn't filed until later, I think it was Thursday evening or Friday.

Q. Wasn't that the report that you were going to require of them, as you say, on Wednesday afternoon, that he should make a statement of the matter and make a report before you took any action in the case? Wasn't that the report that you were looking to be filed?

A. No I expected a report asking permission to resign the trust; make a report and resign the trust.

Q. Well on Thursday didn't you tell him that you would withhold any action in the matter until after he had filed his report, and that you would decline to remove him or appoint anyone else until a report was made of the assets and liabilities still in his hands?

A. I don't think I made that statement because after I investigated the matter from what Mr. Watts and Mr. Sachs had stated I concluded to remove them.

Q. Didn't Mr. Jewett bring you a paper in accordance with your request, didn't he bring you a paper with figures on it, and didn't you say it was so indefinite that you couldn't approve it, and didn't he tell you the reason why it was so was that one of the clerks undertook to furnish it and didn't know very much about it?

A. He made some statement of that kind when he filed a little paper showing the amount received and expended.

Q. That was on Thursday, was it not?

A. I think that was Friday evening late.

Q. He hadn't turned over the property up to that time had he?

A. Yes sir.

Q. What time was the property turned over?

A. I couldn't state; I was informed it was turned over Thursday morning about the time—

Q. (Interrupting) Thursday morning?

A. (Continuing) They were in the office.

Q. Wasn't Jewett in there Thursday, and wasn't he asked the question in regard to whether he had turned the property over?

A. Yes sir.

Q. When did he answer?

A. I don't think he answered at all that morning, as I recall it.

Q. Colonel Jewett, I mean.

A. Yes sir, he may have done so; I wouldnt' say positively about that.

Q. I believe you said awhile ago in your examination in chief that he didn't answer the question at all, but said he was going to do it.

A. As I recollected he said he didn't want to be interrupted.

Q. You have given your evidence before as a witness on the trial of the case against Charles D. Kelso and others in this court?

A. Yes sir.

Q. I will ask you in response to a question asked you upon that examination as a witness if you didn't say: "Yes; Yes sir, Mr. Jewett—Colonel Jewett, Colonel Jewett said on behalf of the trust company that the trust company had decided to turn the property over to Mr. Connor, receiver, and that he was asked there, or some question was asked him as to whether the property had been turned over, and he said he didn't know but it probably had as Mr. Connor was there at the trust company office demanding the keys."

A. I may have made that statement, and I would'nt say now that is I wouldn't say positively whether he did state it or not. I know he said he didn't want to be interrupted, and when Colonel Jewett went out of the office Mr. Sachs said the property had been turned over.

Q. On Friday, judge Mr. Sachs and Mr. Watts came over there about nine-thirty in the morning was it?

A. I think it was about ten o'clock.

Q. They remained there that day?

A. Mr. Sachs was in my office with Mr. Kelso—I don't know how long Mr. Watts remained.

Q. Were they not there the forenoon and afternoon too?

A. Mr. Sachs was, and I am not sure but that Mr. Watts came in during the afternoon.

Q. That was the day on which the process was issued for reclaiming the property?

A. Yes sir.

Q. Now they were there about ten o'clock, they remained up to the lunch hour; did they go out for lunch?

A. Well they left my office.

Q. Did they leave together?

A. Who do you refer to as they.

Q. Mr. Watts and Mr. Sachs; I am speaking definitely now of those two.

A. I think Mr. Sachs and Mr. Kelso left together but whether Mr. Watts was there and went with them I don't know.

Q. Do you remember whether Mr. Watts went out to lunch?

A. No I don't know.

Q. Did you go to lunch that day?

A. Yes sir.

Q. They were back in the office that afternoon?

A. Mr. Sachs was there, Mr. Kelso was there, and Mr. Watts may have been.

Q. What time did they come back, Judge?

A. They came back about two o'clock.

Q. How long did they remain?

A. I don't think they stayed very long in the afternoon; then Mr. Sachs said Mr. Kelso went to Mr. Kelso's office to prepare the papers.

Q. Judge, was Mr. Joe Sachs there on Friday afternoon?

A. I think he was.

Q. Was he there on this business or representing some other interests?

A. Mr. Joe Sachs came there, said something to me in regard to a contract with a party in Louisville that he and Mr. Hester represented; that an order had been made by the Floyd Circuit Court for the completion of it, and he was wanting something done. The thing stopped and he wanted something done with reference to the completion of that contract.

Q. Mr. Sachs was there in the afternoon, Joe Sachs? He wasn't there in the morning was he?

A. I think it was in the afternoon.

Q. Do you remember what hour he came in the afternoon?

A. No sir I do not.

Q. Wasn't it about two or three o'clock?

A. It may have been; I couldn't say about the time.

Q. In the morning you say when Mr. Kelso and D. A. Sachs left the office they went to Kelso's office; you don't know that they went to that office, do you, judge?

A. In the morning in the afternoon? I know they said that was where they were going.

Q. In the afternoon?

A. Yes sir.

Q. You left the office at the time or before they did, did you not?

A. In the afternoon?

Q. Yes.

A. No I remained at the office, I think.

Q. Sir?

A. I think I remained at the office.

Q. Didn't you transact the business for Mr. Joe Sachs, or at least talk with him in regard to the matter on that afternoon and then did he not invite you together with the entire party of gentlemen to go out for some refreshments?

A. No, I think not.

Q. Are you certain that you did not?

A. I am not certain about it.

The Court: I don't think it is material.

Mr. Smith: I want to locate—or show that these men were not there; I am trying to show that they were not in consultation with one another or with the Judge on that afternoon after three o'clock.

The Court: Well go ahead.

Q. I will ask you, Judge, if you and Mr. Watts and Mr. Joe Sachs didn't go over to the cafe over there on the corner and go in the back room and stay there until some five or six o'clock in the afternoon?

A. No I think we were in there but not that late; only a short time.

Q. You all sat in there and had refreshments two or three or four times, didn't you?

A. Something like that, yes sir.

Q. You then, now, do remember that you and Mr. Joe Sachs and Mr. Watts went out of your private office at about three o'clock and went over into this place?

A. I don't know whether we went together; I know I was there when they were there; that is all I can say about that.

Q. Judge, I would like to refresh you recollection, if possible, about this matter because I think it is important. Don't you remember Joe Sachs extended to you an invitation, and that you went on the invitation?

A. I may have done so; I don't know.

Q. Don't you remember that Mr. Watts went with you on that invitation?

A. I think Mr. Watts was there, but as I said whether we were together or not I don't know.

Q. Now as a matter of fact, Judge, to refresh your recollection in regard to the matter, don't you remember that about that time that that matter was mentioned you had given Mr. Kelso instructions to draw up orders removing the New Albany Trust Company as receiver and of appointing himself as receiver and to get up the order on his bond, and don't you know at that time, he on that occasion declined Mr. Joe Sachs invitation to go out with him because you had told him to go and draw those orders, and that Mr. Kelso didn't go with you?

A. No, I don't know about that.

Q. Hadn't you instructed him to go to his office and draw those orders?

A. It was understood that afternoon after the talk between Mr. Sachs and Mr. Kelso that they were top repare the orders that afternoon.

Q. Didn't Mr. Kelso leave your office about the time that you gentlemen left to go over to this place?

A. I don't know about that whether he did or not.

Q. Now I will ask you to refresh your recollection in regard to the matter a little further, is it not a fact that Mr. Dave Sachs,—the request having been made to the party—and he remaining seated, didn't his brother turn to him and ask him too, and he replied that he was not feeling well, and he was going to wait there until you gentlemen returned?

A. I think he stated that.

Q. You think Mr. Dave Sachs stated that?

A. I think so. But he didn't wait there.

Q. He said, though, that he was going to wait in your office?

A. I think so.

Q. Then you and Mr. Sachs—Mr. Joe Sachs and Mr. Watts—You remember now that at the time the invitation was extended that Mr. D. A. Sachs declined it and that you three gentlemen went out?

A. I don't know whether I went with them or not.

Q. How late did you remain there at that place? That cafe we will call it?

A. Oh I was there half an hour, something like that.

Q. Didn't you remain there till five, Judge?

A. I don't think it was that late. I am quite sure it was not.

Q. Didn't you remain there, and didn't Mr. Jewett call you, and didn't you go back and sit down and after you all had three or four drinks, didn't you leave about dark, saying that you would have to go home?

A. No sir, I didn't have any conversation with Mr. Jewett that afternoon.

Mr. Hester: Which Jewett did you refer to?

Mr. Smith: Colonel Jewett.

Q. You say you don't remember about that?

A. No, I know I didn't have any conversation with Colonel Jewett.

Q. Now did Mr. Watts or Mr. Joe Sachs return to your room after you all broke up the party there at that place?

A. No, I think not.

Q. Did you see Mr. Watts or Mr. Joe Sachs after you left that place any more that day?

A. I think not.

Q. Did you see Mr. D. A. Sachs after you left that place any more that day?

A. Yes sir, I saw him at Mr. Kelso's office.

Q. Now this is Friday, Judge, we are speaking of?

A. Yes, I know it is Friday.

Q. Did he go with you back to the court house from Kelso's office then?

A. I don't know whether he walked back to the court house or whether he caught a car there.

Q. The order hadn't been entered then, that is the refusal of Mr. Connor to surrender hadn't been entered upon the books before you left Kelso's office, had it?

A. No, I think not. No.

Q. Had Mr. Kelso reported to you that Mr. Connor had refused to surrender the property before you left? Had he made a report to you before you left Kelso's office?

A. No sir.

Q. Then the report must have been made to you after you last saw Mr. D. A. Sachs?

A. Yes sir.

Q. You didn't see Mr. Sachs any more after you got the report?

A. No.

Q. On that day?

A. No. I think not.

Q. Now, on Friday, Judge, while you were over there, is it not a fact that Mr. Dave Sachs said to you when the question came up as to the surrender of this property, and you gentlemen having ascertained the fact that the property had been surrendered, didn't Mr. Dave Sachs say to you at that time, "That ended it as far as this court is concerned," speaking of your court?

A. No, I don't think he said that.

Q. Didn't Mr. Sachs ask Mr. Kelso to take the phone there and find out if the property had been surrendered to the receiver of the Federal Court, and didn't Mr. Kelso respond that it has been surrendered, after phoning, and didn't Mr. Dave Sachs say at that time, "Gentlemen that ends the matter as far as this court is concerned, the property is in the hands of the Federal Court.

A. No, I don't recall any statement of that kind by Mr. Sachs.

Q. Didn't you at that time, Judge, say to Mr. Sachs, "No it doesn't; we have got a state statute; if we can't reach them under the federal statute, we have got a state statute"; and in response to that didn't Mr. Sachs state, "I know nothing about your statutes, but the property is surrendered, and you can go no further."

A. No sir, I never made such a statement as that in my life.

By the Court:

Q. Did Mr. Sachs make any such statement as that to you?

A. No sir.

By Mr. Smith.

Q. Didn't Mr. Kelso say then that there was a state statute, and that the property could be taken under the state statute?

A. No sir, I think not; if he did I didn't hear it.

Q. Then if there was any reference to the Indiana statute that authorized the reclaiming of the property you didn't hear it?

A. No.

Q. Judge, to refresh your recollection, perhaps it is a question that you have answered two or three times, but to refresh your recollection I want to ask you if Mr. Sachs didn't say to you at the same time that this state statute was mentioned and this entire matter was under discussion, didn't Mr. D. A. Sachs say to you, "You all had better abandon this entire matter because I tell you now if you interfere with the jurisdiction of the United States court you may as well call out your militia, because you are going to have trouble."

A. No, sir, he didn't state that.

Q. That wasn't mentioned at all?

A. No, sir.

Q. You were over, Judge, at Louisville on Monday; what was your object in going over there?

A. I went over there in regard to the responses that were to be prepared.

Q. In order to prepare the responses?

A. No, it was understood that the responses were to be prepared at Mr. Sachs' office on Monday; that was agreed on.

Q. We don't want understood or what was agreed on; what was said?

A. That is what they said on Sunday.

Q. What was said on Sunday?

A. That Mr. Kelso was to come to Mr. Sachs' office; I think Mr. Sachs' asked him to come to his office on Monday morning.

Q. Are you certain of that?

A. That is my recollection of it.

Q. Who asked you to come over?

A. I don't think anyone asked me to come over; the wayI happened to go over there was the sheriff came to me during the morning and wanted to know about his response for himself and the deputy, and he said that he had thought that he would get an attorney at New Albany to represent him, and I told him that as I understood it Mr. Sachs and Mr. Watts were preparing the responses for all of them.

Q. Why did you go over there?

A. And I went over there to inform them of that fact, and I told the sheriff that as they had a copy of the records I would get them and return it to him that night so that he could hand it to his attorney at New Albany and have his response prepared.

Q. Judge, didn't you call up Mr. Sachs on Monday and tell him you would be over there Monday afternoon.

A. I did.

Q. And you went over on Monday afternoon, and hadn't the order of this court of February 17th been received at your city at that time?

A. What order do you mean?

Q. I mean the order of the 17th where it recites the entering of the appearance to the judge of this court in regard to the surrender of this property or the agreement to surrender; hadn't you seen the order, that entry of the 17th before you went over there?

A. Not before I went over. No sir.

Q. You saw it after you got over there?

A. Yes sir.

Q. Now didn't Mr. Sachs, in that interview in his office, in the presence of his two brothers, and in the presence of Mr. John Watts and W. W. Watts and Mr. Kelso, say to you gentlemen, when the order was read down there, that you had better go and make the best settlement you can; this is the first I have seen of this order or know of it, and I propose to quit the entire matter right here?

A. I think he said substantially that at that time.

Q. When was that?

A. That was on Monday afternoon.

Q. Didn't he say substantially the same to you on Friday when he was notified that the property was delivered up?

A. No sir.

Q. Wasn't that the time in the presence of those gentlemen that I have named, wasn't that the time that Mr. Kelso then said, "Why, gentlemen, I want to know who is going to pay the cost?"

A. I think that was stated.

Q. Didn't Mr. Kelso then say that Mr. Watts had agreed to pay the cost, and never mentioned Mr. Sachs's name?

A. No sir, he did not.

Q. He mentioned Mr. Sachs' name too did he?

A. Yes sir.

Q. It was in the presence of these gentlemen that I have named?

A. Well I wouldn't say now; Mr. Sachs' brothers were there a part of the time; Mr. Watts' brother was there a part of the time; whether they were there at the time that was stated, I wouldn't undertake to say.

Q. You were not preparing any responses there that day?

A. No sir.

Q. And Mr. Kelso immediately employed attorneys, or at least went out for the purpose of telegraphing to get other attorneys?

A. Yes sir, that is right.

Q. Judge, don't you remember that Mr. John Watts when this question of costs arose asked you whether or not his brother W. W. Watts had become involved in any way by any promise or obligation to be responsible for any costs whatever.

A. No sir, I don't recall any conversation of that kind.

Q. Not with Mr. John Watts?

A. No sir.

Q. You do not remember of his making any such request of you that he would like to know if there was any obligation of that kind?

A. No sir, I do not.

Q. Did you hear him make any such inquiry of Mr. Kelso?

A. Did I?

Q. Did you hear Mr. John Watts make any such inquiry of Mr. Kelso?

A. Not to my knowledge.

Q. Judge, to refresh your recollection about that matter, I will ask you if you didn't state when Mr. Kelso raised that question and stated that he couldn't pay any; that you had $1300 in court that could be used for that purpose?

A. No sir, I don't think I made that statement.

Q. Nine hundred then, instead of thirteen hundred, did you state that?

A. No, I don't think I did.

Q. Did you mention anything about having money in court that you could use for the purpose of paying expenses?

A. Monday afternoon?

Q. Yes, that Monday afternoon.

A. Not to my recollection, I did not.

Q. Did you at any time before agree that that money should be used for cost purposes, or stated that you would so use it?

A. No, I think there may have been some statement of that kind made either by Mr. Kelso or Mr. Sachs in my presence and I may have said something about it.

Q. You don't have any definite recollection about it then?

A. I do as to the time you speak of.

Q. That is, that you had any such information?

A. No, sir; I do not.

Q. Judge, at the time that Mr. John Watts—that I asked you in regard to Mr. John Watts making the request of you to state to him whether or not his brother W. W. Watts was concerned in this matter or incurred any liability or responsibility by reason of costs or otherwise, if you didn't state to him that he had not, and if he didn't ask you then that you would make a statement in writing to that effect, and if you didn't agree to do it?

A. No, sir; I have no recollection of any such conversation.

Q. Do you say that you did not, or that you do not remember of any such thing having occurred?

A. I say that I did not.

Q. At the time that you went over there, Judge, on Monday wasn't Mr. Watts and Mr. Sachs talking to you in regard to their coming up to attend this court here in response to these citations?

A. On Monday afternoon?

Q. Yes.

A. Something was said about it at some time during the afternoon.

Q. Didn't you tell them that you preferred, that you and Mr. Kelso preferred that they would not come?

A. No sir, I didn't state that.

Q. Didn't you request both Mr. D. A. Sachs and Mr. W. W. Watts not to put in an appearance up here, and that you would see Mr. Hester in regard to the matter, or you would see Mr. Stotsenberg, and have him see Mr. Hester and they could arrange the entire matter and make it entirely satisfactory without their coming, but you didn't want Sachs and Watts to come up here and give their evidence.

A. No sir.

Q. Didn't that occur in that office in the presence of these gentlemen that I have located there?

A. No sir.

Q. On Monday afternoon?

A. No sir.

By the Court:

Q. Judge, I have concluded to ask you a question about the matter that I thought awhile ago probably was not material, that I want to know about. When this proceeding was begun before you to have this receiver appointed did you know that Colonel Charles L. Jewett had gone to Chicago to

see Ryerson & Son, the plaintiff, he, Jewett, at the time representing M. Zier & Company, to get them to bring suit against M. Zier & Company?

A. No, sir, I did not.

Q. If you had known that would you have entertained jurisdiction of that suit?

A. I would not have insisted on the jurisdiction of my court if I thought there was anything wrong whatever.

Q. Did you know at that time that Colonel Jewett, when he went to Chicago to get Ryerson & Son to bring suit against his client and have a receiver appointed for it, that he took $9,000 in money that had been abstracted from the funds of that company?

A. No, sir, I did not, and the first intimation I had of that fact was when Mr. Zier testified to it in this court.

Q. Would you have insisted upon the jurisdiction of your court if you had known these things?

A. No, sir, I would not.

Mr. Fairleigh: Your Honor, I can not object to Your Honor's questions; I don't think what he would have done could be proper evidence as against our client.

The Court: That may be possible, but the court will pursue this investigation as far as it sees fit.

Q. Did you know that when Colonel Jewett went to Chicago with that $9,000, that he also had received $600 as attorney's fee, and that that money had been abstracted from the funds of that company?

A. No sir, I did not, and the first information I had of that was after the hearing had begun here.

Q. Did you know that Colonel Jewett went to Chicago to get Ryerson & Son to sue his client, and have a receiver appointed for his client, that Ryerson & Son had received over $3,000 but a few days before?

A. No sir, and the first time I had any intimation on that subject was when Mr. Zier testified in this court.

Q. Did you know until after Mr. Connor had taken possession of this property that Michael Zier had abstracted from the funds of that company, by padding the payrolls of that company more than $9,000 of its funds?

A. No sir, I did not know that that had occurred, and had no information in regard to his books whatever.

Q. If you had known all of these things would you have appointed a receiver, and as receiver a trust company in which Colonel Jewett was a stockholder?

A. I would not appointed a receiver if I had known there was any fraudulent transaction with this in any way, shape or form.

Q. If you had known that this $9,600 had been abstracted from the corporations funds and turned over as you now know it was, and if you had known that this sum of over $3,000 had been paid to Ryerson & Son only a few days before that receivership proceedings had been instituted in your court, if you had known these things would you have appointed Mr. Kelso in the effort to get this property away from the bankruptcy court?

A. No sir.

By Mr. Hester:

Q. Judge Utz, Mr. Kelso was appointed receiver as the result of a petition that was filed before you as Judge of the Floyd Circuit Court?

A. Yes sir, that is my recollection.

Q. By whom was that petition filed? What attorney?

A. I think Mr. Sachs filed it.

Q. You mean D. A. Sachs, the defendant?

A. Yes sir.

By Mr. La Follette:

Q. The statement, Judge, which you made a while ago that you reached the conclusion to appoint Kelso, and called him over to see you or you to see him the next morning for the purpose of having him appointed, was reached by your own conclusion, I want to ask you whether or not on Wednesday afternoon the matter of the law governing the right to the custody of this property of M. Zier & Company was discussed before you by Mr. Sachs and Mr. Watts and possibly Mr. Jewett.

A. I think I stated that in my direct examination.

Q. Now did that argument or propositions of law that were given to you on Wednesday afternoon by those attorneys influence you in your judgment that you ought to have the receivership in your court?

A. It certainly did.

By Mr. Smith:

Q. Judge Utz, you determined on your own judgment without consultation with either Sachs or Watts to remove the trust company and to appoint Mr. Kelso, did you not?

A. I wouldn't put it that way.

Q. Well how would you put it?

A. I would say that it was done on my own motion and after Mr. Sachs had stated that he thought the trust company ought to be removed.

Q. You gave your deposition, you gave your evidence in this case heretofore?

A. Yes sir.

Q. Did you not say in that examination this: "You say in that examination of this question there, then had been no

definite conclusion reached on Wednesday during that conference? Answer. "No sir, because the attorneys didn't have anything to do or say about what the conclusion was to be; I had to determine that as I understood it myself."

A. Yes sir.

Q. That was in reference to the removal of this trustee?

A. That is what I say now.

Q. They didn't show you any authorities on that afternoon, did they, Judge?

A. They didn't that afternoon.

Q. Now you say that Mr. D. A. Sachs filed that petition to remove one receiver and appoint another; are you not mistaken in that?

A. I say that is my recollection; the records will show.

Q. No the records will show that Mr. Sachs signed it, but the record doesn't show who filed it.

A. Oh, as to who prepared it, I wouldn't say as to that.

Q. Who filed it, I am asking as to that?

A. And I don't know who filed it, whether Mr. Sachs came in person and filed it or whether somebody else did.

Q. You had instructed Mr. Kelso, though, to prepare that? You gave Mr. Kelso instructions on Friday to prepare it?

A. No I don't think I gave Mr. Kelso any instructions as to that.

By Mr. Hester:

Q. The petition was filed on behalf of the United States Tube Company, was it not?

A. Yes sir.

Q. Mr. Kelso represented the United States Tube Company previous to the acceptance of his appointment as receiver; now state to the court how, by what arrangement his representation of that company was to cease and the arrangement was to change?

A. My understanding was it was an arrangement between Mr. Kelso and Mr. Sachs.

Q. And how was Mr. Sachs to figure as attorney for the United States Tube Company who filed that petition?

A. He was to file that petition.

Q. He was to appear for the attorney for the tube company?

A. Yes sir.

By the Court:

Q. Was that the petition upon which Mr. Kelso was appointed?

A. The petition for the removal of the trust company.

Q. Was it the petition upon which the trust company was removed?

A. Yes sir.

By Mr. Fairleigh:

Q. You say that was the arrangement between Kelso and Sachs, have you any personal knowledge of that?

A. Yes sir, I think they talked about it in my presence.

Q. When?

A. Shortly before, I think the same day it was done.

Q. Where?

A. I think that was in my office.

Q. You think it was the same day it was done? What day was it done?

A. Thursday, I think.

Q. You think they talked about it Thursday in your office?

A. Yes sir.

Q. That is about Kelso transferring his client to Sachs for the purpose of filing this petition?

A. Yes sir.

Q. Who was there at the time, Judge?

A. Mr. Sachs and Mr. Kelso and myself.

Q. Was it in the morning on Thursday?

A. I think so.

Q. Was Mr. Watts there in the morning?

A. I don't know whether Mr. Watts was there at that time or not.

Witness excused.

Charles D. Kelso, called for the Government, being first duly sworn and examined by Mr. LaFollette, testified as follows:

Q. You may state your name to the Court?

A. Charles D. Kelso.

Q. Where do you reside?

A. New Albany Indiana.

Q. Are you a member of the Bar at New Albany?

A. I am.

Q. Are you acquainted with Frederick D. Connor the Receiver in Bankruptcy Court of the property of M. Zier & Co.?

A. I am.

Q. Are you acquainted with D. A. Sachs and William W. Watts?

A. I am.

Q. Did you know of the fact that suit had been instituted in the Floyd Circuit Court in the name of Ryerson & Son against M. Zier & Co.?

A. I did.

Q. Were you appearing for any parties in connection with that proceeding?

A. I was.

Q. Do you know who filed the original petition—what attorney for Ryerson & Son?

A. Nothing except what I have heard that Mr. Watts filed it and I think I have seen his name signed to the bottom of the original petition.

Q. Did you know that Jewett & Jewett appeared for M. Zier & Co. in that action?

A. I was so informed.

Q. Did you learn afterwards that proceedings were instituted in bankruptcy against M. Zier & Co?

A. I did.

Q. Did you know the fact that Frederick D. Connor was appointed by the Bankrupt Court as Receiver of M. Zier & Co.?

A. I knew that—yes.

Q. When did you learn that Mr. Connor was demanding possession of the property which before had been in the possession of the New Albany Trust Co. the Receiver appointed by the State Court?

A. I think I learned that for the first time on the 24th of January, 1903.

Q. Proceedings had been begun in the Bankruptcy Court before that time?

A. I do not know about that, whether it was in January but I learned at the time when Mr. Watts presented that petition for authority.

Q. That was in February some time?

A. Yes. sir: in February sometime instead of January.

Q. By the Court: Petition for what?

A. To come up here under limited appearance.

Q. And present the question of jurisdiction?

A. That is the first I heard of Mr. Connor's appointment.

Q. That petition in the state court was presented by William W. Watts?

A. Yes sir.

Q. Then you first learned of the condition as to the bankrupt court and the fact that there was a conflict of jurisdiction. Did you know of the fact that Mr. Watts and Henry Jewett came up to Indianapolis and presented the question to the District Court?

A. I learned that afterwards, Yes, sir.

Q. And did you learn that the New Albany Trust Co. and Mr. Watts as its attorney stated to the Circuit Court of Floyd County that they had stated in Indianapolis in the District Court that they would turn over the property of M. Zier & Co. to the Receiver appointed by the United States District Court?

A. Yes, sir, I learned that, but it was also stated at the same time that there was to be no entry made of record as to that matter.

Q. Who made that statement?

A. Both Mr. Watts and Mr. Jewett.

Q. Where was it made?

A. In the office of Judge Utz.

Q. When was that conversation had?

A. That was had on Thursday morning, I think the 19th of February.

Q. Were you present on Wednesday afternoon before Judge Utz when Mr. Sachs and Mr. Watts and Mr. Jewett were present?

A. No, sir.

Q. When were you first before Judge Utz when this matter was being discussed?

A. Thursday morning February 19th.

Q. Had there been any call on you by any of the parties prior to Thursday morning?

A. Yes sir.

Q. Who came to see you?

A. Mr. Sachs and Mr. Watts.

Q. Where?

A. At my office in the City of New Albany.

Q. At what time in the day?

A. I should say about a quarter after five o'clock in the afternoon.

Q. Of Wednesday?

A. Yes, sir.

Q. By the Court. When you say Mr. Sachs and Mr. Watts you mean the defendants?

A. D. A. Sachs and W. W. Watts.

Q. Had you received any notice that they would probably call on you?

A. Yes, sir.

Q. How had you received that notice and from whom?

A. Henry Jewett telephoned to me to know how long I was going to remain at my office and he said some one was going to come to see me and I asked him if Col. Jewett was there and made an engagement for a gentleman in my office to meet Col. Jewett.

Q. You remained in your office?

A. Yes, sir—until Mr. Watts and Mr. Sachs came.

Q. Then what conversation did you have with them?

A. They came in and Mr. Sachs did most of the talking. Mr. Watts appeared to be very much humiliated about what had occurred in Indianapolis. He stated to me that he intended to comply with his promise and Mr. Sachs said the

court would not permit the Trust Company to turn over the property and the court wanted to meet me in the morning at nine o'clock for the purpose of taking some action to prevent the property from being restored to the United States Court. Mr. Sachs and I discussed the matter and finally it was suggested that another Receiver be appointed in place of the Trust Company, that the Trust Company was going to tender its resignation and then we discussed what would be the effect of the appointment of the Receiver, what would be the trouble, if any with the United States Court, and if there would be any punishment in case the court should proceed against us for contempt and Mr. Sachs assured me that he had never heard of any person being punished for civil contempt by being confined in jail.

Q. By the Court. Who said that?

A. Mr. Sachs and finally I said to them "Well, I am willing to accept the appointment if you gentlemen will guarantee me if I am put to any cost. I am poor and do not care to expend what money I have in fighting somebody else's battle, and they agreed to do it.

Q. Who did?

A. Mr. Sachs did practically. Mr. Watts did not say much about it then.

Q. What did Mr. Watts say about it—did he make the same agreement?

A. Not at that time. Mr. Watts seemed to be very much cut up about what had occurred up here and very much humiliated and kept declaring all the time that he was going to comply with his agreement with this court.

Q. Was there some statement made to you there by Mr. Sachs about the law bearing on the case?

A. Yes, sir he said he thought the Floyd Circuit Court had jurisdiction and the United States Court did not have it.

Q. Was there an agreement then made that evening to meet next morning in the court room or in Judge Utz room.

A. The agreement was that I should meet Henry Jewett, D. A. Sachs, Mr. Watts and Judge Utz. Judge Utz in the meantime called me up and made an appointment that afternoon to meet next morning at eight o'clock.

Q. Was there anything else occurred more than you have stated that Wednesday evening?

A. There may have been some other conversation but I do not recall it now.

Q. Then after that the following morning, whom did you first meet in connection with the matter?

A. Judge Utz.

Q. Where?

A. At my office.

Q. What conversation was had with Judge Utz.

A. The Judge came in and stated that the Trust Company was about to turn back the property to the United States Court and he did not intend to permit it to go and he wanted me to accept the office of Receiver which I agreed to do. Then we went from my office around to Pearl Street and stopped in the Trust Company.

Q. Were you and Judge Utz together at that time?

A. Yes, sir.

Q. Did you meet Henry Jewett there?

A. I don't think Henry Jewett was there but Mr. Sauer and Mr. Connor were there and I called Mr. Sauer to one side and told him not to deliver that property until after the Court had taken action in the matter and he did not say whether he would or would not.

Q. Do you know whether or not Mr. Connor the Receiver was there asking for the delivery to him of the property?

A. I don't know what Mr. Connor was doing there. He was there.

Q. You heard no conversation on his part with any member of the company?

A. No sir, I did not.

Q. You had no conversation with him yourself?

A. Just to bid him the time of day.

Q. From there did you go to Judge Utz room?

A. I think I went over there in the Masonic Temple Building on a little matter over there and after I finished the business there, I went back and went over to Judge Utz office?

Q. About what time did you reach the office?

A. I think about ten minutes after nine o'clock.

Q. Who was there when you arrived?

A. No one except Judge Utz.

Q. How long did you remain there until any one else came in?

A. I think ten or fifteen minutes.

Q. Then who came in?

A. D. A. Sachs and W. W. Watts.

Q. Did they come in together?

A. Yes, sir; they came together.

Q. Was the subject of M. Zier & Co. property taken up then before any one else came in or did any one else come?

A. The law of the case was discussed and finally I said "Where is Henry Jewett? "He was to be here." And they said they did not know and I said "I will call him up by telephone and ask him why he is not here" and I called him up and he came over and he then announced that he was busy at the office and his brother would come over there and represent him in the matter.

Q. Did Henry Jewett take any part in the discussion of the question there before Judge Utz that morning?

A. Not that morning he did not.

Q. He did not file any report?

A. No, sir.

Q. How long was it before Col. Jewett came in?

A. I should say ten or fifteen minutes afterwards.

Q. In the mean time was there still some discussion about the law governing the case?

A. Yes, sir—we discussed the law a good deal.

Q. What was said by Mr. Watts about the law affecting the property.

A. I can not remember what was said particularly by Mr. Watts. While Mr. Watts was protesting all the time that he wanted to comply with the order of this court, he was protesting that he intended to comply with the order of the court, he concurred in the views of the law expressed by Mr. Sachs but he was at all times saying he desired to comply with his promise to this court.

Q. After Col. Jewett came in, what statement did he make to the court about the matter if any?

A. I cannot tell all that Col. Jewett said but he said a good deal and took quite a long time about it.

Q. Along what line did he talk?

A. He said that the Trust Company had concluded to comply with the promise it had made to this court and that it intended to turn the property over to Mr. Connor. During his talk Mr. D. A. Sachs turned to him and asked him if he had delivered up the property and Col. Jewett said he did not desire to be interrupted or insulted, I could not catch just what word he used there and then he went on with his speech to the court.

Q. I am at a loss to know just what the speech was but the substance was—

A. The substance was that the Trust Company in good faith had concluded to turn the property over to the Receiver of the United States Court.

Q. Did he discuss the law any?

A. No, sir—I think not.

Q. Did he say anything there in the presence of yourself and the other lawyers about the condition of the assets, that is the property?

A. No, sir. He was there simply to say that the Trust Company was going to act in good faith and carry out the promise made to this court. It took him a good while to say it but he finally said it.

Q. What statement was made by either of you during that meeting and how long did it last?

A. Mr. Sachs immediately said that there had been some betrayals and the court so expressed itself and both seemed very much disappointed about the action of Mr. Jewett and the meeting adjourned. I went to my office and I think Mr. Watts and Mr. Sachs went to Louisville.

By the Court:

Q. You say both seemed disappointed?

A. Yes, sir.

Q. Who?

A. Judge Utz and Mr. Sachs about the statement of Col. Jewett.

Q. By Mr. LaFolette: That was on Thursday?

A. Yes, sir.

Q. Forenoon?

A. Forenoon.

Q. Were there any other proceedings had that day or steps taken?

A. No, sir.

Q. Was there anything stated about any other meeting?

A. Why, in the afternoon Judge Utz came to my office and requested me to call up Mr. Sachs and invite him to come back the next day and I did call up Mr. Sachs and invited him to come back the next morning?

Q. Let me ask you about that meeting in the forenoon: What statement, if any, did Mr. Sacks make in your presence about what he came over for? What was he there for?

A. He was there in compliance with the previous agreement he had made with me the afternoon before to meet me there at 10 o'clock.

Q. What did he come over there for?

A. For the purpose of taking some steps to retain jurisdiction of that property.

Q. Do you know whom he had talked with prior to his coming to New Albany on Wednesday in regard to the situation of the property or the necessity for taking any steps to retain it?

A. No, sir.

Q. You don't know anything about that?

A. I don't know a thing about that.

Q. By the Court: You understand he is asking you about Mr. Sachs?

A. He is asking me about a conversation prior to Wednesday. I don't know what Mr. Sachs did or who he talked to.

Q. And you don't know why he came on Wednesday?

A. I do not except from what I learned since.

Q. By the Court: From whom did you learn it?

A. From Mr. Sachs and Judge Utz.

Q. Tell what Mr. Sachs informed you?

A. He said he came around there Wednesday afternoon for the purpose of taking some steps to retain jurisdiction of the property in the Floyd Circuit Court.

Q. By Mr. LaFollette: When you telephoned over Thursday afternoon, I believe you say it was to Mr. D. A. Sachs. Did you call Mr. Watts also?

A. No sir, —I think I told Mr. Sachs to invite Mr. Watts to come along with him.

Q. Did you fix an hour at which they were to meet you and where it was to be?

A. Ten o'clock at Judge Utz office.

Q. Then did you have any further talk yourself with Judge Utz before the meeting on Friday at 10 o'clock?

A. Yes, sir—I think I did. The Judge was very much disappointed about the action of the Trust Company in declaring it was going to turn the property over and felt aggrieved about it and he insisted that he had jurisdiction and intended to keep it—retain it.

Q. When you met on Friday morning—you did meet at Judge Utz office?

A. Yes sir.

Q. Who was present at that meeting?

A. Mr. D. A. Sachs, Mr. Watts, Judge Utz and myself and I believe the Deputy Clerk was there though I am not sure about that.

Q. You may relate to the court just what steps you took and what was said back and forth among you about the business that was being looked after?

A. At that meeting?

Q. At that meeting on Friday morning?

A. We discussed the law of the matter for about probably half an hour or so and then concluded to adjourn to my office.

Q. By the Court: You knew then that the property had been turned over to the Receiver of this court?

A. Yes sir.

Q. And that the Receiver of this court was then in possession of the property?

A. Yes, sir—we knew that.

Q. Proceed?

A. We went around to my office and then the court announced that he intended to appoint me Receiver and that he would instruct me to appoint Mr. Sachs my attorney. Mr. Sachs said he was willing to accept the position and then I said to the court "Well, I don't know whether I can serve or not. I am attorney for some parties of record and the statute says that an attorney of record cannot be appointed Receiver and the court suggested that I withdraw as the

attorney of these parties and then I could be apppointed Receiver and I did then withdraw my appearance for these parties and we agreed that I should be appointed Receiver.

Q. By Mr. LaFollette: Did you have any opportunity to confer with your clients about that withdrawal?

A. No, sir; I did not confer with them.

By Mr. Fairleigh. May I ask where that was?

A. In my office.

By Mr. Fairleigh. Was Mr. Watts there?

A. No, sir.

By Mr. LaFollette.

Q. And Utz and Sachs were there?

A. Yes sir.

Q. That was after you reached Judge Utz's office?

A. Yes sir.

Q. Was there any conclusion reached after you left as to what course you should follow?

A. The conclusion arrived at was that I was to be appointed receiver; but Mr. Watts dropped away from us on the way around; he left us and didn't come with us.

By the Court:

Q. He was present when the determination was reached that you should be appointed receiver?

A. Yes sir.

By Mr. Fairleigh:

Q. Where was that?

A. That was at Judge Utz's office.

By Mr LaFollette:

Q. Was there anything said at that time or prior thereto about expenses incidental to the proceedings?

A. Yes sir, I announced there that Mr. Watts and Mr. Sachs had agreed to bear the expenses.

Q. Did you state that to Judge Utz in the presence of each of the gentlemen?

A. I did, yes sir.

Q. Where was it that that statement had been made to you that you repeated in their presence?

A. At my office the evening before,—the Wednesday evening before, not the evening before.

Q. You may tell the court just what was said to you on Wednesday evening that induced you to say to the court, that they had agreed to bear the expense? You may repeat their words, if you can?

A. I don't know that I can repeat their exact words, but I said to them this. I said to Mr. Sachs principally, because Mr. Watts was walking back and forth and seemed excited and worried about the matter, that there might be some contempt proceedings or something of that sort, and

that I might be punished, and he said—might be fined for there was some costs attached to these things, and he said, that he had never heard of a person being punished in a civil proceeding for a civil contempt by being put in jail, but that I might be fined and there might be some costs attached to it; and I said, well if they would agree to stand the fine and costs that I would accept the position as receiver. That is the conversation that I reported to Judge Utz.

Q. What did they say when you said that?

A. Mr. Sachs agreed to do it.

Q. Can you give substantially what he said?

A. Well he said he would pay the costs.

Q. When you talked with Judge Utz about it over at the court room was there anything said to him about whether or not there was any money that might be ordered by the court to be applied to the expenses.

A. Yes sir, there was.

Q. You may state what was said about that?

A. There was some discussion about perhaps the court could get $900 that was in the hands of the clerk for the purpose of paying costs; that that would not be turned over to the federal court; there was some discussion about that also.

Q. You spoke of money that was in the hands of the clerk. Was that money that had been paid in in connection with the suit or the receivership in the M. Zier & Company case?

A. Yes, some Louisville concern had paid it in, for the purpose of securing the completion of some contract.

Q. It was still in the hands of the clerk?

A. Still in the hands of the clerk.

Q. At the time when you talked to the court about withdrawing as attorney for certain parties connected with the case, what was said about the condition it would leave them in as to their being represented in court by anyone?

A. I said that Mr. Sachs could represent them.

Q. What did Mr. Sachs say about that?

A. He proceeded to represent them by signing a petition for the removal of the trust company.

Q. That was the tube company that you have reference to particularly?

A. Yes sir.

Q. The United States Tube Company?

A. Yes sir.

Q. That company had been your client prior to the arrangement about your being appointed receiver?

A. Yes sir.

Q. And with that talk and agreement with Mr. D. A. Sachs he assumed to act for the company?

A. Yes sir, he signed the petition.

Q. And acting for the company?

A. Acting for the company in that matter.

Q. Acting for the company in that matter he made out and filed or caused to be filed a petition showing to the court—

Mr. Miller: I object to that, if your Honor please.

Mr. LaFollette: I was going to ask whether or not he filed or caused to be filed in the Circuit Court of Floyd county a petition on behalf of the United States Tube Company.

The Court: If who did?

Mr. LaFollette: If Mr. D. A. Sachs, acting as attorney.

Mr. Miller: He was reciting that that was what Mr Sachs did, and was asking if that wasn't so. And we are objecting to it.

Mr. LaFollette: I will withdraw the question.

Q. I will ask you if it is not a fact that Mr. D. A. Sachs accepting the position as attorney for your client, the United States Tube Company, filed in its behalf a petition before the judge of the court in vacation, alleging that the New Albany Trust Company, receiver of M. Zier & Company, had wrongfully and unlawfully and without leave of the court, turned over the property of M. Zier & Company, which had it in its possession as receiver, to Frederick D. Connor, who was acting as receiver, appointed in bankruptcy in the United States District Court of Indiana, and that the company, the New Albany Trust Company as such receiver was at the time threatening and would if not prevented turn over to Frederick D. Connor, receiver, all the other assets of M. Zier & Company which still remained in its hands as such receiver?

A. Yes, sir, he signed that paper and swore to it before a notary public.

By the Court:

Q. D. A. Sachs did?

A. Yes sir.

By Mr. LaFollette:

Q. And it was upon that proceeding and petition that the New Albany Trust Company as such receiver was removed from its position as receiver.

A. It was on that petition and in connection with its report that it had delivered the property over.

Q. And it was after that that you were appointed receiver was it not?

A. Yes sir.

Q. I want you to state to the court whether or not it is not a fact that after you were appointed, D. A. Sachs, the attorney acted for you as your attorney?

A. He certainly did.

Q. You may state to the court whether or not under his advice and direction—

Mr Miller: (Interrupting)

If your Honor please I object. Every question he asks is for a conclusion.

Mr. Kealing: He has a right to finish his question:

Q. (Preceding question read by the stenographer and completed by the attorney as follows): You may state to the court whether or not under his advice and direction you as such receiver made demand upon Frederick D. Connor, the receiver appointed by the bankrupt court for the possession of the property which he had received from the New Albany Trust Company?

Mr. Miller: I object to that because it calls for a conclusion. I think it is only proper for him to tell what Mr. Sachs said to him upon that subject, and then it is possible for the court to determine whether it was under his advice or direction.

The Court: I think that is better. I am not deciding that that question is improper, but I think the other way is the better way to get at it Mr. LaFollette. Ask him what was said; This witness is intelligent, and you can ask him what Mr. Sachs said upon that subject, if anything.

Q. You were appointed receiver by the Judge of the Floyd Circuit Court after the filing of the petition that I have referred to.

Mr. Miller: He has stated that.

A. Which petition do you refer to?

Q. I mean this one for the tube company; was it after that that you were appointed.

A. Yes sir.

Q. What, if anything did D. A. Sachs say to you after your appointment in regard to your duties, and what you should do as receiver?

A. Well we discussed the matter at length and went to my office and investigated the statutes, the statutes of Indiana, as to how we should proceed in the matter. We turned to the statute in regard to receiverships, and consulted about how the statute should be construed, and he advised me to make a demand on Mr. Connor, and went with me as far as upper 7th street, when I was on my way to make the demand, he and Mr. Watts.

By the Court:

Q. On your way up to Mr. Connor to make the demand?

A. Yes sir.

Q. Did they both go with you?

A. Yes sir.

By Mr. LaFollette:

Q. How near is 7th street to where Mr. Connor lives.

A. We separated at 7th and Spring, Mr. Sachs and Mr. Watts, and Mr. Connor lives on Main, two squares away a little above 7th street.

Q. Do you know where Mr. Sachs and Mr. Watts, were going that caused them to go that far with you?

A. Yes, they were sauntering along waiting for a car, to catch a car to go to Louisville.

Q. What, if anything, was said to you about what you should do if Mr. Connor refused to deliver to you the property on your demand?

A. Oh, the whole matter had been arranged; the papers had been prepared that afternoon at my office by Mr. Watts,—or Mr. Sachs and myself.

By Mr. Fairleigh:

Q. Did you say Mr. Watts was there?

A. No Mr. Watts wasn't there: Mr. Watts came in, I believe, once during the afternoon, but he went out right away; he didn't stay long. And the papers were prepared; we anticipated that Mr. Connor would refuse to deliver the property, and the writ was prepared and the order of the court and everything. Everything was ready before Mr. Sachs went to Louisville.

By Mr. LaFollette:

Q. When you say the orders, had you prepared the orders that you would ask the judge to sign?

A. Yes sir.

Q. Had he signed them yet?

A. He had only signed the order requiring me to make a demand on Mr. Connor.

Q. That one had been signed?

A. That one had been signed.

Q. And before you made that demand, you had anticipated a refusal and prepared the papers for the subsequent steps up to the time of having the sheriff go out and take the property?

A. Yes sir.

Q. Then after you went out and made demand on Mr. Connor for the property you didn't see Mr. Sachs any more that evening?

A. No, he took a car, I suppose, and went to Louisville.

Q. After the refusal you may state then what you did as to causing or asking the judge to sign the further orders in regard to the sheriff?

A. Well I reported back; I went to the clerk's office in the court house to sign the report which had been prepared previously, wherein I showed that Mr. Connor had refused to turn over the property, and then the court signed the other order, which was there ready for him to sign.

Q. Do you know who delivered the writ to the sheriff?

A. My impression is that the court handed the writ to the sheriff, but I am not certain about that.

Q. Did you go with the sheriff when he went down to the plant?

A. No, I remained at the clerk's office.

Q. Until the sheriff returned and he reported that he had possession, but stated that there was a man out there in the property, and I declined to go out and take possession, for the reason that I wanted full possession or none at all; and the sheriff went out again for the purpose of getting this man out, and he came back and reported that he had put him out and was ready then to put me in possession.

Q. What time was it that you were taken out by the sheriff, or went out and took possession of the property?

A. It was between eight and nine o'clock; just exactly when I don't know.

Q. Of Friday night?

A. Friday night.

Q. I believe you stated a while ago that during the afternoon while the papers were in course of preparation Mr. Watts came into your office?

A. Yes.

Q. But wasn't there all the time?

A. No he wasn't there all the time.

Q. Was there anything said by him at any time after you were appointed receiver or immediately before you were appointed, when the matter was being talked on between you and Mr. Sachs, did he join at any time in the conversation as to the methods that you might adopt or resort to?

A. Mr. Watts, he protested all the time that he wanted to comply with the order of the court, but he gave opinions in regard to the law—

The Court: (Interrupting) Answer the question. You are not answering the question that was put to you. Read the question.

Q. (Preceding question read by the reporter from his notes)

A. No I don't think he did, excepting this: That while we were preparing the notice to serve on the trust company and Mr. Watts, he said I will get out of here and go around to Goodbugs, and you can send the sheriff around there, and he will find me there, and you can serve the notice

on me there. We went around there after awhile, saw Mr. Watts and took lunch with him, and he said the sheriff had served him.

Mr. Fairleigh;

Q. What notice was this?

A. That was the notice for the removal of the New Albany Trust Company.

By Mr. LaFollette:

Q. During the time that these matters were being discussed did you hear of the proposition that was talked of of having the trust Company cited for contempt?

A. Yes I heard that.

Q. And did you, in the same connection, hear the matter talked of of citing Watts for contempt also?

A. Yes sir.

Q. You may state to the court what, if anything Mr. Watts himself said about that?

A. Well he said he ought to be treated the same as the trust company.

By the Court:

Q. Who said that?

A. Mr. Watts.

Q. He wanted justice to be dealt out impartially?

A. Well I don't know what he wanted done.

By Mr. LaFollette;

Q. What day was that on which that matter was talked of? On Friday?

A. On Friday.

Q. At what time were the responses to be made in answer to the citation for contempt?

A. I think they were out for Saturday? they were afterwards postponed until the Wednesday following.

Q. After you took the property on Friday night did you continue in possession then until Saturday night or Sunday?

A. Yes I continued in possession, I suppose, until Mr. Connor took possession.

Q. Well that is what I mean; how long was that?

A. I don't know when Mr. Connor took possession.

By the Court:

Q. It was after your trial here.

A. Well whenever it was that is the time.

By Mr. LaFollette:

Q. Following the time when you took possession on Friday night, did you have any conference with Mr. Sachs or Mr. Watts before a citation was served on you to appear here?

A. Oh yes.

Q. When did you have the next meeting?

A. Saturday.

Q. What time Saturday?

A. Oh I suppose it started at ten o'clock in the morning and lasted until late in the afternoon.

Q. Where did you meet them?

A. They came to my office.

Q. When I say meet them, did Mr. Watts and Mr. Sachs come there together?

A. Yes they came together.

Q. Do you know what they came there on Saturday morning for?

A. Mr. Watts came for the purpose of filing his response to the proceedings for contempt, or asking the court to defer the time in the matter.

Q. What did Mr. Sachs come there for, if you know?

Mr. Miller: I think he had better state what he said.

A. Well I don't know what he came for; I know we went out to the plant together, Mr. Sachs and I did, and went through it.

Q. What, if anything, did he say to you on that visit about what you should do in the plant?

A. Well, we discussed the question as to whether we should operate or not, and it was concluded to operate the plant beginning Monday.

(Whereupon the court adjourned until to-morrow, Wednesday morning, at nine o'clock.)

WEDNESDAY, MARCH 1, 1903.

MORNING SESSION. 9 A. M.

The court met pursuant to adjournment, present the same as on yesterday.

The Direct Examination of the witness Charles D. Kelso, was resumed as follows:

Questions by Mr. LaFollette:

Q. What was said if anything about any further or different steps to be taken before the court, or in connection with this matter on that day?

A. Mr. Watts advised Mr. Sachs and I to go to the Deputy United States Clerks office at New Albany. He said that he had been there and had looked over the record and had failed to find any entry or order which set out the proceedings had in this court on the 16th of February. He suggested to Mr. Sachs and I that we go there and examine the record so that we could verify his statement about it.

By the Court:

Q. When was that?

A. That was on Saturday.

By Mr. LaFollette: That was after you had taken possession of the property?

A. Yes sir, he had before represented to us there would be no such order made.

Q. Well what statement had he made about that order?

A. He represented that the court had agreed that no such order would be entered; that is to say that the record wouldn't show anything that took place here on the 16th of February, but that the original order would stand.

Q. Well you knew, and Mr. Sachs knew,—that is you talked together about the original order, and the order of adjudication?

A. Oh yes, the first order we knew all about it, because we had talked about it.

By the Court:

Q. That is the order for the appointment of Mr. Connor as receiver, and his order to take possession of the property?

A. Yes sir.

By Mr. LaFollette:

Q. What was said, if anything, about that order that had been originally made being still in force?

A. Well Mr. Watts said that that order would stand.

Q. And did you and Mr. Sachs go to the Clerk's office at New Albany?

A. We did. I examined the files there, and found no order, but found a letter from Mr. Butler, the Clerk which Mr. Sachs told me to take a copy of; instead of taking the copy I asked the Deputy Clerk to let me have the original letter, and he let me have it and I took it to my office and had a copy of it made and afterwards returned it to him.

Q. That was a letter stating what?

A. What he would do—

Mr. Miller: If Your Honor please, I think the letter had better be produced?

Mr. LaFollete: It would be the best evidence of course of what it contained; I am not particular about it.

Mr. Miller: I don't know that it is at all material.

Mr. LaFollette: No, it is not.

Q. You got the letter from the clerk when you and Mr. Sachs were together.?

A. Yes sir.

Q. You each of you read it?

A. Yes.

Q. What time on Saturday, if you know, did Mr. Sachs and Mr. Watts return to Louisville?

A. It was late in the evening.

Q. Was Mr. Watts with you, and Mr. Sachs, during the day most of the time? They were over in New Albany?

A. Not most of the time; Mr. Sachs and I were together most of the day, but Mr. Watts wasn't with us most of the time; he was with us frequently.

Q. What time in the day, if you know, was the extension of time given by Judge Utz in the contempt proceedings?

A. I don't know. I wasn't there. We were over at the Deputy Clerk's office at the time I understood after Mr. Moser and Colonel Jewett and Mr. Watts were before the court.

Q. At the time they were before the court you and Mr. Sachs were not present?

A. We were not present.

Q. When was it that you received the notice or citation to appear here in this court on account of the retaking of the property?

A. About half past nine, Saturday night.

Q. How soon after that notice was served did you communicate with M. Sachs or Mr. Watts?

A. I communicated immediately by telephone to Mr. Sachs.

Q. On Saturday night?

A. Saturday night.

Q. What was said between you by phone?

A. I told him that I had just been served by the Deputy Marshal with a rule to show cause, and told him that he was also included in the rule. He wanted to know what the charge was against him, and I said acting as my attorney.

Q. And what response did he make to that?

A. Well he said he didn't see how they could proceed against him. Then we made the engagement to meet the following morning.

Q. Where were you to meet?

A. At Judge Utz's office.

Q. Did you communicate with Judge Utz on Saturday night?

A. Yes; oh, yes I went down to Judge Utz's office.

Q. Did you talk with him before you communicated with Mr. Sachs?

A. Not about the time of meeting the next day; that was afterwards communicated to Mr. Sachs after I had met Judge Utz.

Q. So that the arrangement for the meeting at Judge Utz's office was with his understanding and consent?

A. Mr. Sach's?

Q. No, Judge Utz?

A. Oh yes.

Q. Was there any suggestion or statement made that Mr. Watts should also meet with you?

A. Well I don't know what was said in the telephone communication.

Q. Well, I mean was there anything said by you or Judge Utz about calling Mr. Watts into conference?

A. Well Judge Utz and I concluded to have Mr. Watts come over also; but I don't know what was said in the communication by telephone, because we sent some young man out to telephone to him; I don't remember who it was, now.

Q. Then did you meet on Sunday morning?

A. Yes sir.

Q. Who was present at that meeting?

A. Well, there was Judge Utz; I think the Deputy Clerk was there, and myself, first. We waited some little time at Judge Utz's office, and I looked out the window and saw Mr. Watts and Mr. Sachs coming down Spring street; we immediately went down from Judge Utz's office, and met them at the court house door and told them we would go over to my office as there was no fire at the court house.

Q. And so the meeting was had at your office, was it?

A. Yes sir.

Q. At that meeting Mr. Kelso, you may state fully what the conversation was; what was said by any of the parties present?

A. Well, Mr. Sachs and Watts and Judge Utz and I discussed the law; I couldn't say just what we said, but the opinion was expressed that the Floyd Circuit Court had jurisdiction still, and I then asked Mr. Sachs about the provision in the rule served on me about redelivering the property and not interfering with it; I said I don't want to violate the order of the court, and asked him if I hadn't better turn the property back, and he said, no, that don't mean that; you can turn it back if you conclude to do so when you go up to answer the rule; and we discussed the effect, and the form and substance and contents of the responses to the various rules, and finally it was agreed that I should come over to Mr. Sachs's office the next morning. Then the meeting adjourned. It adjourned along about 12 o'clock.

Q. Did you have any further talk or meeting there with Sachs or Watts on that day?

A. I had a talk with Mr. Sachs in the afternoon about five o'clock. My baby was sick and I had come to town to get some medicine, and coming up in the car I met Hester, and asked Mr. Hester about what had taken place up here on the 16th. And he told me. I said, there was no order of that kind. Hester said, yes, there is, and I have the order at my office. Well, I said, we might as well quit if that is so. I

said I would like to get the order. When I went back home I telephoned to Mr. Sachs about it, and he said well, we are done for if that is true, because I am a great fellow for records.

Q. Sachs said that?

A. Yes; and he said, don't come over now until you get that order from Mr. Hester, or a copy of it. I went to the office of the Deputy Clerk the next morning about nine o'clock and waited for him some time and then went to Mr. Hester's office. Mr. Hester had the order, and wouldn't let me have it until he had taken it down to the Deputy Clerk's office. Finally I got the order at the Deputy Clerk's office and I took it over to my office and had a copy made of it, and then I went over to Mr. Sach's office at Louisville.

Q. Have you a copy of that order now?

A. I left it with Mr. Sachs.

Q. You left it with Mr. Sachs?

A. Yes.

Q. Was that Sunday afternoon that you went over?

A. No, it was Monday morning. I telephoned to him about that Sunday afternoon when I got home.

Q. Then on Monday morning you went over to Sachs' office?

A. Yes sir.

Q. You had a copy of that order with you, had you.

A. I had a copy of that order with me.

Q. Had you also arranged with Judge Utz to go to Louisville that morning, Monday?

A. No, I made no arrangement with Judge Utz.

Q. After you got to Louisville and went to Sachs' office, what if anything was said about calling Mr. Watts in?

A. Well I don't know. Mr. Watts came there. You see they have a very large building there, and the telephone is in the front office; I don't know how far away it is; and we were in the back office. What occurred over the telephone I don't know, but Mr. Watts came there.

Q. About what time in the forenoon was that meeting at which you and Mr. Sachs and Mr. Watts were present in the office at Louisville?

A. Between ten and twelve o'clock; I couldn't state just the time.

Q. And what was said there?

A. Well Mr. Watts was shown this order, and he said that wasn't according to his understanding.

Q. As to the matters it contained, you mean?

A. No, not that; but there was not to be any such order put of record.

Q. Well then what further was said?

A. Well then we entered into a discussion of the law. Mr. Maurice Sachs, this gentlemen sitting here, (indicatting), Mr. Jo Sachs, Mr. D. A. Sachs and Mr. Watts and myself taking part in the discussion.

Q. As to the law that would govern it in the face of that order?

A. As to the jurisdiction of the courts, yes sir.

Q. Well the question that you were there mainly to discuss was as to what kind of response to make, was it?

A. Yes sir, that is what I went over for, to get them to prepare my response.

Q. The question of law had been pretty thoroughly discussed before as to what they understood to be the law governing the case, wasn't it?

A. Well, Mr. Maurice Sachs had never discussed that question with me before; Mr. D. A. Sachs and Mr. Watts had.

Q. In the discussion on Monday was there any new authorities or different citations presented to you than what there had been before?

Mr. Fairleigh: If the court please, there is no dispute about what the opinion of these gentlemen was; what professional opinion they had, or that they felt any doubt about it; and it occurs to me that this is consuming too much time.

Mr. LaFollette: I asked this question for the purpose of showing, or learning, whether or not a different conclusion had been reached there that morning than what had been reached before, tending to delay the response.

The court: I will hear the testimony.

A. No, no different conclusion was reached, for they still contended that the Floyd Circuit Court had jurisdiction.

Q. Well then, you may go on and state what was said and done with reference to the preparation of the responses?

A. Well I don't say anything was done in that direction at all. We talked all day about the law. Finally Mr. Watts' brother came and suggested that Mr. Watts ought to retire from the meeting; that he ought not to be connected with it at all. I said I don't see any reason why he should retire; he was there; he was ruled to answer, or respond, and I couldn't see that his being there now would endanger him in any way. So he staid a while and finally announced that he had an engagement with Mr. Henry Jewett to meet him at his office at half past one, I think it was, and he left.

Q. Was there anything said as to the purpose of the meeting with Mr. Jewett?

A. Yes, Mr. Watts wanted Colonel Jewett to come up here and represent him in the contempt proceeding. I told Mr. Watts that Colonel Jewett wouldn't come; he need not expect that.

Q. But notwithstanding you statement he left there to see Col. Jewett about that matter?

A. Yes.

Q. What was said, if anything, about his having gone out, after he did go, by Mr. Sachs or yourself, about Watts' absence?

A. Notning that I know of particularly.

Q. Did Judge Utz come in, in the meantime?

A. No, Mr. Sachs and I went out to lunch, but we left word with the colored janitor that if Judge Utz came—Mr. Sachs describing him—to tell him to wait till we returned. I think Judge Utz had telephoned over that he was coming.

Q. Well was there anything further said about what you would do in the way of responses before you came back from lunch? You were still together, as I understand?

A. We were still together. No, we didn't talk about that. We met a great many gentlemen, and talked with them; they were joking with Mr. Sachs about being proceeded against for contempt.

Q. What was said during the afternoon finally as whether or not Mr. Sachs would come up with you, on Monday.

A. He finally concluded not to come.

Q. Well what was it he said in connection with that, as to why he wouldn't come?

A. Well Mr. Watts came back in the afternoon, and announced that Colonel Jewett wouldn't come up here and difend him, and Mr. Watts said that he was coming any way. We finally got into a discussion as to whether it was policy for him to come; I advised Mr. Watts not to come, because I thought the court was after him, from what I heard at New Albany, and he concluded not to come. Mr. Sachs said he wouldn't come because he didn't want to testify against his friend, Mr. Watts.

Q. Well did he state to you there, or was there anything said as to what matters he might be required to state that he didn't want to tell?

A. Oh well he didn't state them directly; I knew what he didn't want to tell. At least I thought I did.

By the Court:

Q. What was his language when he said he didn't want to come here, or wouldn't come here?

A. Well he said he would rather go to Jamaica than to come up here, or appear here.

Q. Mr. Sachs said that?

A. Mr. Sachs said that.

Mr. Miller: My understanding is that Jamaica is a pleasant place to go to.

The Court: He doesn't seem to have availed himself of the option.

By Mr. La Follette:

Q. What time in the afternoon was that statement made to you?

A. Along about three or half past three o'clock.

Q. Well when you learned that neither Mr. Watts nor Col. Jewett, nor Mr. Sachs, — that Mr. Jewett wouldn't appear for Watts, and Watts would not come and Sachs had concluded not to come, what statement did you make about it?

A. Well I said that I was going out to telephone to Indianapolis for a lawyer.

Q. What if anything did you say to them or either of them there about the expense that would be incident to the proceeding?

A. I asked them if they were going to carry out their agreement to put up the expenses. Mr. Watts said: You know I couldn't bind Ryerson & Son; you know an attorney couldn't bind his client to put up money, and they said they wouldn't put up anything; and I recognize the fact that I would have to bear my own expenses.

Q. At the time that the matter of expense was talked about, was there anything said to you that the expenses would be taken out of the money—that is charged to Ryerson & Son, or whether they would pay them?

A. No, nothing was said about Ryerson and Son in the beginning. This was said by Mr. Watts over in Mr. Sachs's office on Monday.

Q. What if anything was said,—going back now to the time when you talked about expenses earlier,—what was said if anything by either of these parties in the presence of the judge, or by the judge, about making an allowance out of the funds of the M. Zier & Company property, to you and to the attorney?

A. Well they advised,—both Mr. Watts and Mr. Sachs,—that the court certainly had the right to retain the $900 under the ruling in the 184th United States case; that it was in possession of that fund and had the right to pay the expenses of the court.

By the Court:

Q. There are two cases in that volume, 184th United States; which case is it?

A. The Comingor case, I think it was.

Q. That is the case that Mr. Sachs was in?

A. Yes sir.

By Mr. LaFollette:

Q. What if anything was said about making an allowance of $1,000 to the attorney or to the receiver, and $400 to the other party?

A. Well the Trust Company had agreed to report to the Floyd Circuit Court and have a settlement with the Court. Mr. Watts claimed $1,000 as attorney and the Trust Company was to receive $400.

By the Court:

Q. I don't understand that. Who did Mr. Watts claim it for?

A. As attorney for the trust company in the matter of the receivership of M. Zier & Company.

By Mr. LaFollette:

Q. That was for services in the suit in the State Court prior to this order to turn over the property?

A. Yes sir.

Q. That didn't have reference then to the expenses of yourself and Mr. Sachs?

A. No.

Q. Well after you had gone out to telephone to Indianapolis, was there anything further said over at Louisville on Monday afternoon about the steps that were to be taken and matters done?

A. I came back and reported to them that I was unable to get the gentleman that I went out to employ and said I was going home and make preparations to go to Indianapolis right away. Judge Utz and I started out and Mr. Watts called me to one side, spoke to me, said he was sorry it happened and anything he could do for me he would gladly do himself if he could; and then we left, went up to the Western Union Telegraph office, and I telegraphed up here.

CROSS-EXAMINATION.

Questions by Mr. Smith:

Q. Mr. Kelso, I believe you are a lawyer?

A. Yes sir.

Q. How long have you been in the practice?

A. Since 1885.

Q. Since '85; you are one of the parties who were cited to appear here in this court?

A. Yes sir.

Q. And were convicted on the rule?

A. Yes sir.

Q. Now in jail?

A. Yes sir.

Q. Under what sentence?

A. Sixty days.

Q. How long a time have you served on that sentence?

A. Since last Tuesday a week.

Q. You are a stockholder, I believe, and were at the time of your appointment as receiver, in the New Albany Trust Company?

A. I am not certain I am a stockholder now. I ordered my stock sold.

Q. You were at that time?

A. I was at that time.

Q. You were representing a good many creditors as against the M. Zier & Company corporation were you not at the time these troubles arose and continued?

A. Well I was representing the New Albany—or the Indiana Water Company, that had a small claim for water, monthly rental; the United Gas & Electric Company that had a small amount due; and then I represented the United Stated Tube Company; and I represented the house of Standard and Gamble for some boilers that had already been procured.

Q. The tube company was the claim that you say on Friday you turned over to Mr. Sachs?

A. Yes sir.

Q. In order that he might have a standing in court to file a pleading?

A. Yes, sir.

Q. I believe you said upon yesterday that on Saturday—no, Friday I mean, when the suggestion was made as to your being appointed receiver and when you were trying to arrange the orders that you were attorney of record, and it was then on that day further suggested by the court that you withdraw as attorney of record, in order to qualify yourself as receiver?

A. That is true.

Q. When did that court adjourn finally that term, Mr. Kelso?

A. I don't remember what day it was. I think it was the 14th of February?

Q. Was it not on Saturday, the 14th of February?

A. I think it was.

Q. When did Mr. Watts and Mr. Jewett come to Indianapolis for the purpose of intervening here in the federal court?

A. I don't know.

Q. Don't you know that they were here on the 16th and the 17th?

A. I have heard they were; yes.

Q. You know that they were bock there on the 18th?

A. No, I don't know that.

Q. You don't know that they were back at New Albany on the 18th?

A. On the 18th of February?

Q. Yes.

A. Yes sir, I know that; yes sir, they were at my office, Mr. Watts was on the 18th.

Q. Don't you know as a matter of fact that on the 14th of February in the Floyd Circuit Court before these gentlemen left for this city, that they filed a petition asking for advice and authority to intervene in this court?

A. Well I heard Mr. Watts talking about that, about having authority for a limited appearance here; yes I knew that.

Q. Now you say you withdrew as attorney on Friday in order to qualify yourself? That was the 20th? In order to qualify yourself to be appointed receiver?

A. Yes.

Q. That you had discussed the questions upon that day in regard to the Indiana statute which did not permit you to be appointed if you were attorney of record for any of the creditors?

A. Yes, sir.

Q. I want to read to you the order as of February the 14th. This is the order in the transcript that is filed as an exhibit here with the response and it reads as follows: "Comes now the New Albany Trust Company, receiver herein and files its petition herein showing to the court divers matters concerning the filing of a petition in the District Court of the United States for the district of Indiana by the Inland Steel Company, John C. Thruston and Dey Time Register Company, as creditors of said M. Zier and Company, in involuntary bankruptcy, and a petition seeking the appointment of a receiver therein to take charge of the assets in this courts possession." I read that part of it merely to call your attention to the petition that was filed upon which the following order was made:

"And said receiver is hereby ordered and directed through its attorney, to proceed to Indianapolis, Indiana, and there by a limited appearance and by protestation against appearance, only, by petition upon such appearance only, lay before said district court of the United States for the district of Indiana the facts with regard to the matters here, said injunction, restraining order, and said estoppels and to suggest to said court the orders of this court and the fact that had it been fully informed, as is believed by this court, its order with respect to the assets herein would at the most, have been a direction to make an application to this court at the proper time and in the proper way for delivery of the said assets to such district court's receiver or trustee after proper disposition and settlement

of the matters herein. The court being further advised and on motion of said New Albany Trust Company, receiver, it is ordered that the Inland Steel Company, John C. Thruston and the Dey Time Register Company, be and they are hereby ordered to appear and show cause why they have prosecuted said petition in involuntary bankruptcy why they have filed said petition seeking the appointment of a receiver for the assets of this estate, why they have sought to take from this court the assets of this estate, why they should not be punished for contempt for disobeying the orders of this court without first obtaining leave of the court by petition of intervention or order in this cause. And they are hereby commanded to show such cause on or at the time of the first day of the next term of this court. And service of a copy of this order upon Jacob Herter and George H. Hester because of their apparent representation of said petitioning creditors and then said co-counsel for the purpose thereof on all persons and parties. And it is further ordered that this court shall retain such control of said matters as may be necessary for the purpose of the entry of any and all such orders as may be deemed proper and necessary herein and therein. And Jacob Herter and George H. Hester such attorneys now being present in court and Hester having been heard in opposition to the said petition and having notice of the entry of this order, it is now ordered that no other or further notice hereof need be given the said Inland Steel Company, John C. Thruston and Dey Time Register Co., petitioners in said bankruptcy proceedings. And comes now C. D. Kelso and asks leave of the court to withdraw as the attorney of record for the following named parties: United Gas and Electric Company, United States Tube Company, Indiana Water Company and Simon David and the court now permits the said C. D. Kelso to withdraw herefrom." Now this order bears date according to the certificate of the clerk as of the date of February the 14th, and as of the same date that the petition for advice was filed by Mr. Watts in the latter court. Now do you desire to explain your evidence on yesterday and this morning as to your withdrawal of these claims on Friday the 20th, and explain why it is that you said that you withdrew on account of the fact that you were going to be appointed receiver, with in truth and in fact they were withdrawn at least six days before the appointment of another receiver was suggested?

A. Yes sir, I can explain that. Mr. Sachs claimed that he was a great fellow for records, and that the record was the thing we had to depend on. He said that he had an experience with the district court of Kentucky one time, and that

his experience was, while we were working, the other fellows were working—

Q. (Interrupting). When did that conversation take place?

Mr. Kealing: Let him explain.

A. (Continuing). He said that he had filed in the court, I don't know what sort of a paper, he called it a paper, and that he took the precaution to have the clerk make a certified copy of it; that when the case was over and the bill of exceptions was prepared, in looking over the record he found that instead of filing the paper of record, the record only showed the tender of the paper, and for that reason he always took the precaution to have certified copies. It was suggested on Friday by Mr. Sachs that the record be fixed in that way. This entry of February 14th was not entered of record on February 14th, but was entered after that time, and this little memorandum here about my withdrawal was added on to the entry after the entry had been put of record by the clerk; and that is my explanation of it.

Q. Who added it to the entry Mr. Kelso?

A. I think the deputy clerk did.

Q. The deputy clerk?

A. After the order had been signed; the order had not been signed, the last day of the court we have a great many things that are not put of record; they are left on the files to be entered by the clerk on the record, and when the record is written up then the court reads them and signs the record.

Q. You say the order, then, had not been drawn up on the record.

A. No, that little end of the order had not been.

Q. Had the other order been drawn up?

A. It had been drawn up, and left with the clerk and was put on record; and then Mr. Sachs and I drew that little entry there and I took it down and left it with the clerk and it was added. So that it is how happened.

Q. Was that done without the knowledge of the judge?

A. No it was done with his knowldge.

Q. Done with his knowledge?

A. Yes sir.

Q. Did you not know that you could not withdraw as attorney of record six days after the court had adjourned? Did you not as a lawyer know that fact?

A. I knew that, but the record was there and the Court said he would show that on the record. Yes sir, I knew it.

Q. Didn't you know as a lawyer that they could not show on the record a transaction that had taken place six days after the Court had adjourned?

A. Yes sir.

Q. Why did you insert it, then, or have it done?

A. Because the court asked me to do it.

Q. The court asked you to do it?

A. And the court wanted to have it done, and he wanted the record to stand in that way.

Q. It was, then, at the suggestion of the court that you had this interlineation made in that order?

A. At the suggestion of the court and Mr. Sachs.

Q. Where was it Mr. Sachs made that suggestion?

A. At my office.

Q. Who was present?

A. Judge Utz and myself and Mr. Sachs.

Q. When was that?

A. The morning of February 20th—19th, I mean.

Q. That is, on Thursday?

A. Friday. Friday was the 20th.

Q. Now, Mr. Kelso, didn't you say in your evidence upon yesterday that when you and Judge Utz and Mr. Sachs and Mr. Watts were in Judge Utz's court, or rather in his court room there, upon February 20th, that this discussion came up, and it was there that Judge Utz suggested that you withdraw of record and you did withdraw?

A. I may have said that but I was mistaken about that.

Q. What has refreshed you now that it occurred over in your office?

A. Well it just comes to my mind that that is where it occurred.

Q. You have no data, or anything particularly, that called it to your mind except that you now remember that it occurred over in your office?

A. Yes, there is so many things that occurred there that I am liable to get confused about these things, but I am satisfied it occurred in my office.

Q. Do you know it occurred there?

A. I think it did.

Q. Then you are not positive?

A. I think I am now, because it was prepared on a little type-written sheet of paper at my office and dictated to my stenographer.

Q. Then it was not in the order—

A. (Interrupting). Oh, no.

Q. (Continuing). That had been furnished by Mr. Watts?

A. Oh, no.

Q. As drawn up under his petition?

A. No sir.

Q. And it was furnished by you, and as you said dictated at your office?

A. Yes sir.

Q. And you think Judge Utz was there and suggested it?

A. I think he was.

Q. And you had it inserted by the Deputy Clerk in the record.

A. No, I didn't have it inserted; the court had it inserted. I couldn't control the records. I took it down there and the court ordered him to do it.

Q. Didn't you have as much right to have it inserted in there as any judge did to have it inserted in there?

The Court: That is not a proper question to the witness.

Q. Who was present at your office when Mr. Sachs suggested that that order be made in that way.

A. Mr. Sachs, Judge Utz and myself.

Q. Was Mr. Watts there?

A. No, he wasn't there.

Q. Where was he?

A. I don't know.

Q. Why didn't you tell us about this yesterday in telling us about what occurred in your office?

A. I wasn't asked about it.

Q. Well you were sworn to tell the whole truth, and the whole conversation that occurred there?

A. Yes.

Q. Why did you omit this?

A. Because my attention was not called to it particularly.

Q. It was not a matter of sufficient importance—

Mr. Keeling: (interrupting) I submit that is objectionable. He has already answered that he wasn't asked about it.

Mr. Smith: I don't think my question was completed.

Q. It was not a matter of sufficient importance to occur to you that it ought to be told?

A. No, it just escaped my memory, that was all.

Q. Do you say to the court now, that on yesterday, at the time that you were asked to detail the conversations and transactions that occurred in your office on that Friday, the 20th, that it didn't occur to you that this order had been made as you say now, at the instance of Mr. Sachs, and that the interlineation was made upon the record to conform to it in order to show that it was transacted during the existence of the term? You say that didn't occur to you?

A. I say it escaped my memory yesterday, or I would have told about it.

Q. You knew all the time Mr. Kelso that that was a wrongful act, and a forgery of the record, didn't you?

A. I thought it was.

Q. You were a party to it?

A. Yes sir, I was a party to it.

Q. And yet you had forgotten that important fact?

Mr. Kealing: I submit, your Honor, that he has already said that he had forgotten it.

The court: Yes, he has answered that.

Q. How do you change your statement of yesterday when you said that Judge Utz advised you in the court house, while in the court house, to withdraw your attorneyship of record for these parties?

A. Yes, I change that because I think I was mistaken about it.

Q. And you now think it was at your office?

A. Yes sir.

Q. What time of day do you think that occurred?

A. In the morning, forenoon some time.

Q. At what hour?

A. I couldn't say exactly what hour it was. Probably along about ten o'clock.

Q. Friday when these gentlemen came over from Louisville Mr. Kelso, is it not a fact, and hasn't it been so stated by you, that when they came over they went to Judge Utz's office and found you there?

A. Friday, yes sir.

Q. When they first came over?

A. Friday, no. Not Friday. Thursday is when they met me at Judge Utz's office. If I said they met me at Judge Utz's office Friday I made a mistake; they met me at my office.

Q. Judge Utz met you in your office?

A. He met me Thursday in my office.

Q. Didn't Judge Utz make an agreement with you on Thursday afternoon to see you at 8 o'clock Friday morning, and say that these gentlemen would come at nine?

A. No, he made an engagement with me Wednesday afternoon to meet me at 8 o'clock Thursday morning.

Q. And these gentlemen were to come over there?

A. Yes sir.

Q. Now where was it you say that Mr. Watts and Mr. Sachs first met you and Judge Utz on Friday morning?

A. At my office.

Q. How long did you remain there?

A. Oh we remained there some time, until the order—I think Mr. Sachs and I remained there all morning, until noon, when we called in the Deputy Sheriff and sent the Deputy Sheriff with the notices to serve on Mr. Moser, the President of the New Albany Trust Company, and Mr. Watts who was around at Goodbug's.

Q. This is Friday we are talking about.

A. I am talking about Friday also.

Q. You remained there all the forenoon?

A. I think so.

Q. And they remained in New Albany all day Friday?

A. Yes sir.

Q. Mr. Kelso when did you first meet Mr. Sachs and become acquainted with him?

A. Why, Wednesday the 18th of February.

Q. You had never met him or become acquainted with him before then?

A. Never had met him or seen him before, that I know of.

Q. I believe you said it was five o'clock on Wednesday the first meeting?

A. Yes.

Q. At your office?

A. Yes.

Q. You met then Mr. Sachs and Mr. Watts?

A. Yes sir.

Q. At that time do you say that you talked about the question of the jurisdiction of the Floyd Circuit Court?

A. Yes sir.

Q. And finally that you told them that you would agree to accept the receivership provided they agreed to indemnify you for costs and expenses?

A. Yes, sir.

Q. And there it was that you say that they did agree?

A. Yes, sir.

Q. Did you hear Judge Utz's evidence here yesterday?

A. Partially, yes.

Q. Did you hear Judge Utz say anything to the effect that he had not discussed the appointment of a receiver, or the removal of the trust company until the parties came over to see him, Messrs. Watts and Sachs on Wednesday, and that he didn't determine upon the removal until Thursday morning?

A. I heard him say that, yes sir.

Q. Well is that in accordance with your understanding of the facts?

A. No; well, I didn't understand it that way, any how.

The Court: That is not a proper question.

Q. You heard him say that?

A. I heard him say it, yes sir.

Q. Did you have any agreement with him to accept the receivership before this,—with Judge Utz?

A. No.

Q. Had there been anything said or done in regard to the appointment of a receiver before that time?

A. Except what these two gentlemen talked to me about on Wednesday afternoon.

Q. Then you did not know it was in the mind of Judge Utz to remove the New Albany Trust Company and to appoint you?

A. Oh yes, these two gentlemen said that the trust company was going to resign.

Q. Said that the trust company was going to resign?

A. And that Mr. Henry Jewett had agreed to hold the property until, the court could appoint a successor and send out there and take possession before it was turned over to the United States Court.

Q. Judge Utz had determined that he was going to appoint you as a successor, is that true?

A. No, I didn't say that.

Q. Is that true?

A. No.

Q. Then you don't know that Judge Utz had determined to appoint you at all?

A. No.

Q. Who suggested you?

A. Mr. Watts and Mr. Sachs, and discussed the matter as to whether I would take it or not, and I said I would.

Q. And it was on their suggestion that you agreed to take it.

A. Oh no; the court came around the next morning and I agreed to take it.

Q. That was the first time the court talked to you in regard to it?

A. These gentlemen were looking for somebody; they wanted to get somebody that wouldn't give way; like Mr. Watts and Mr. Jewett had given way up here in the court; that is what they said about it.

By the Court:

Q. They wanted somebody to make a fight?

A. Yes sir that is what they wanted to do.

Q. Against the authority of this court?

A. Yes sir.

Q. And you said you had no intimation from Judge Utz that he would appoint you, or that he would expect to appoint you before that time?

A. None except by the telephone call from him.

Q. That was making the appointment to see you the next morning?

A. Yes sir.

By Mr. Smith:

Q. Mr. Kelso, is it not a fact that at the time Messrs. Watts and Sachs came to your office that they told you that Judge Utz wanted to see all of the attorneys the next morning and had asked them to give you the right information?

A. No sir.

Q. It is not true?

A. No sir, it is not true.

Q. Isn't it true that you said at that time that you could not give the information to Mr. Stotsenberg because you were not on speaking terms with him?

A. No sir, that is not true.

Q. Is it not true that when the gentlemen came up in your office that they didn't sit down at all and that Mr. Sachs delivered the message, and then they left?

A. Oh no, they stayed there some time.

Q. Were you on speaking terms with Mr. Stotsenberg at that time?

A. Oh yes, yes sir

Q. Perfectly friendly with him?

A. Yes sir.

Q. And didn't tell these gentlemen that you were not?

A. No sir. Mr. Stotsenberg is looking after my business at home now.

Q. What time did these gentlemen consume in your office there on that Wednesday?

A. Why I think they stayed there probably half an hour. I caught the six o'clock car up home.

Q. Did they sit down?

A. Yes sir.

Q. Have you more than one office there?

A. I have three rooms.

Q. What office were they in?

A. In the rear one.

Q. Is that the way the stairway goes up?

A. The stairway goes up and faces the south, runs to the south, and they were in the south room of the building.

Q. You say Mr. Watts didn't do any talking up there?

A. Not much of it; no Mr. Sachs did most of it.

Q. And you relied upon Mr. Sachs although you had not known him, didn't know of his financial condition, and knew nothing of him whatever, a total stranger?

A. I knew the Sachs brothers reputation in Louisville as lawyers. That is all I knew about it. But I knew Mr. Watts; had known Mr. Watts for some time.

Q. Now did you telephone to them any more that Thursday, to Louisville to these gentlemen?

A. Thursday?

Q. Yes.

A. I only telephoned once to them on Thursday.

Q. When was that?

A. That was in the afternoon.

Q. Did you receive a telephone before these gentlemen reached your office, from any one saying that they were coming? On Wednesday I am talking about now?

A. Yes.

Q. Who was it from?

A. Henry Jewett.

Q. What did he say to you?

A. He said some gentlemen were coming around to see me.

Q. That you say was about five o'clock, and they stayed about a half hour?

A. Yes sir.

Q. Now on Thursday what time did they come to New Albany?

A. I should say it was along about half past nine o'clock.

Q. You were in consultation at that time with Judge Utz at his office were you not? according to appointment made on the previous afternoon?

A. I was there according to the agreement to meet these gentlemen there at nine o'clock the next morning.

Q. You had fully arranged between Judge Utz and yourself about your accepting the receivership?

A. Oh yes, I had agreed to accept it.

Q. They came over about ten?

A. About half-past nine; they made an appointment to meet me and Mr. Henry Jewett and the Judge there at nine o'clock.

Q. Who was with them when they came in there?

A. Mr. Watts and Mr. Sachs were by themselves together.

Q. Mr. Jewett didn't come in?

A. He didn't come in, no, not till he was telephoned for.

Q. I believe you say the conversation there was the general run of conversation, was still the jurisdiction of the Floyd Circuit Court?

A. As to how the court could retain the property.

Q. Then you say the next conversation turned upon the question of your executing a bond and of your accepting the trust and of your resigning your attorneyship in order to do so? Is that true?

A. No; no, the next thing that occurred was to telephone to Mr. Henry Jewett to come over.

Q. Now tell us the next that occurred?

A. He came over and said that he was busy at his office and that the colonel would come there and represent him. The colonel came over and then stated to the court that he would turn the property over. Mr. Sachs interrupted, and asked him if he had turned the property over, and Colonel Jewett said, "I don't want to be insulted," or interrupted—I

couldn't catch which word he used there; and he finally went away; and then these gentlemen, Mr. Sachs and Mr. Watts and Judge Utz seemed disappointed about it.

Q. Let me ask you at that particular juncture there if Mr. Sachs didn't then turn to you just as Colonel Jewett went out and ask you if you could not ascertain whether or not the property had been turned over?

A. Yes sir.

Q. And didn't you take up the phone to find out?

A. Yes I telephoned over to the trust company and asked Mr. Sauer if he had; he said he had.

Q. And didn't you announce the fact to the gentlemen assembled there?

A. I did indeed, yes sir.

Q. That the property had been turned over.

A. Yes sir.

Q. And Judge Utz was present at the time you made that announcement to them?

A. He was there.

Q. Now didn't Mr. Sachs then say to you and to the gentlemen assembled that that ends the matter; if the property has been turned over under the agreement and is now in the possession of the United States Court, that that ends the matter right there?

A. No he did not say that.

Q. Did he say that in substance?

A. No.

Q. What did he say?

A. He said that the Jewetts had went back on them; that is what he said.

Q. Well go on and tell all the matter?

A. That is all he said at that time.

Q. Now you haven't got down to the execution of the bond yet, or the directions about your acceptance?

A. Then these two gentlemen left and went to Louisville.

By the Court:

Q. What two gentlemen?

A. Mr. Watts and Mr. Sachs.

Q. Who was it said that Jewetts had deserted them?

A. Mr. Sachs. And they went to Louisville. I thought the matter was ended there. After dinner Judge Utz came to my office, and asked me to telephone Mr. Watts and Mr. Sachs to come back the next morning.

By Mr. Smith:

Q. That would be Friday?

A. And I telephoned them to come back and meet me at my office. Then the bond question came up after they had

agreed to the appointment of myself, the bond question was then discussed after that; we went around to Judge Utz office after dinner, and the bond question came up; they insisted that the bond ought to be small, and Judge Utz insisted it ought to be for $30,000.

Q. Now you say that the bond question was raised upon Friday for the first time?

A. After dinner, around at Judge Utz's office the amount of it.

Q. And you say now, instead of the question of your withdrawing was raised on Friday, but you said yesterday that that question was discussed late Thursday?

A. No I said that question was discussed on Friday, me resigning.

Q. What time Friday?

A. In the morning.

Q. That was on Friday that that was discussed, but not at the court house; at your office?

A. At my office on Friday.

Q. Was that before you came over to the court house on Friday, or had you been to the court house and returned to your office?

A. Oh no. I hadn't been to the court house.

Q. Had these gentlemen been to the court house before that discussion took place?

A. Not to my knowledge on Friday.

Q. Then after you had passed beyond what you yourself stated occurred at the court house, how did the conversation further progress, if there was any further conversation in the morning?

A. On Friday I am talking about.

Q. I am talking about the conversation on Friday?

A. I wasn't talking about the conversation on Friday at the court house about the bond question; we talked about that after dinner, and it was concluded to give the bond.

Q. What did you do Friday morning while the gentlemen were over there?

A. We discussed the law, and Mr. Sachs and I drew up this notice, and petitioned for the removal of the New Albany Trust Company.

By Mr. Kealing:

Q. At your office?

A. At my office.

By Mr. Smith:

Q. That was a typewritten petition?

A. Yes sir.

Q. Didn't you draw that petition?

A. I dictated it with the assistance of Mr. Watts who made some suggestions about it.

Q. Mr. Watts, you say?

A. Mr. Sachs I mean.

Q. Was Mr. Watts there?

A. He was there about noon, heard the paper read, knew we were getting up the papers to serve on him, and made arrangements to be at Goodbug's where the sheriff went and served it on him.

Q. Mr. Kelso, is it not true that Mr. Sachs was in a different room from where you were dictating that paper at the time you were dictating it, and didn't he come over to your office upon an invitation from you to go by your office until you fixed up some papers and then you and he would go to lunch together?

A. No.

Q. You did go to lunch from there?

A. Yes we went around and took lunch with Mr. Watts.

Q. At the time of the drafting of the paper is it not true that you were in a different room from Mr. Sachs at that time?

A. No, I called the stenographer back in the room where we both were.

Q. Is it not a fact that you drew one paper, and afterwards tore it up, and afterwards presented a second paper to him?

A. No.

Q. You didn't first tear up one that you had prepared?

A. No I think not.

Q. Is it not a fact that at that time that I have indicated when you came back to Mr. Sachs you said, as I am going to be appointed receiver in this matter it would hardly look right for my name to appear on record, and I want you to appear in this particular matter just by signing your name to the petition that the court had directed to be drawn.

A. No sir.

Q. Hadn't Judge Utz instructed you to bring the matter to his notice by a statement or petition showing the fact and the conduct of the New Albany Trust Company and to ask for their removal and punishment?

A. I think he had told us to do that, told Mr. Sachs and I.

Q. Did he tell Mr. Sachs, or tell you?

A. Yes he told Mr. Sachs; Mr. Sachs was the leading spirit in the case.

Q. Altogether?

A. No not altogether; he was one; I wouldn't have got into it if it wasn't for these gentlemen.

Q. Did Mr. Sachs have anything to do with the case at all until Mr. Watts and Mr. Jewett got into trouble with the Floyd circuit court?

A. Not at all; I think not.

Q. That was his first entry into the case?

A. Yes sir.

Q. You were in the case before that were you not?

A. Yes, I was in the case representing some creditors.

Q. You say you wouldn't have gotten into this, if these men hadn't come to your office to see you?

A. I mean Mr. Watts and Mr. Sachs and Judge Utz; if they hadn't; I had no interest in the thing.

By the Court:

Q. Would you have accepted the position if you had known it was to interfere with the jurisdiction and lawful possession of the receiver of the United States court?

A. I would not; no. The largest claim I had was only $3,000.

By Mr. Smith:

Q. Mr. Kelso, what induced you to take the risk of standing in contempt of this honorable court and render yourself liable to be punished?

A. Well I will tell you what induced me to do it, was particularly the request of Judge Utz, and then I felt if we would succeed in establishing the jurisdiction, I felt that we might get a pretty fair allowance from the Court.

Q. Then it was not entirely a friendly feeling toward these gentlemen, one of whom was a stranger to you, but it was from a money consideration?

A. It was more from the request of Judge Utz; I expected, of course, to be compensated for my services; there is no question about that.

Q. You say this bond arrangement took place on the afternoon of Friday, I believe?

A. Yes sir.

Q. You and Mr. Sachs and Mr. Watts, and Judge Utz and Mr. Joe Sachs were there at that time, were they not?

A. Joe Sachs came in there in the afternoon some time.

Q. He was there at the time you say the bond was fixed, was he not?

A. I don't know positively, but he was there some time during the afternoon; he may have been there at the time the bond was fixed; I wouldn't say that he was or was not.

Q. Now is it not a fact Mr. Kelso that a little between three and four o'clock that Mr. Joe Sachs invited you gentlemen to go out for refreshments and that you declined to accept because you said that Judge Utz had directed you to draft some papers?

A. I know I didn't go with them; I know he invited some gentlemen to go out and take a drink.

Q. Is it not a fact that at that time Judge Utz and Mr. Watts accepted the invitation?

A. I think they went away together.

Q. Is it not also a fact that Dave Sachs said that he wasn't feeling well and intended to wait for them in the court room until you gentlemen returned?

A. I don't think he said that; he went with me to my office.

Q. You say he stayed with you?

A. Yes.

Q. Stayed with you how late?

A. Stayed with me for some time until I prepared the entries I was working on. He assisted me in it. For instance the paper here in relation to the appearance of the Inland Steel Company by Mr. Hester was prepared in my office; I prepared an order that I thought was sufficient and Mr. Sachs said it wasn't strong enough; he interlined it so as to make it appear that Mr. Hester had entered a full appearance in the action pending in the Floyd circuit court.

Q. What time was that in the day, have you any idea?

A. I think that was in the morning some time.

Q. In the morning? We are talking about afternoon transactions now?

A. It was in the morning I was talking about.

Q. We were talking about the time Joe Sachs extended the invitation to go and get a drink?

A. Oh I beg your pardon; he went over to my office.

Q. Let's see if I can find something else that occurred on that afternoon?

A. He was sitting there and taking particular note of what I said to the stenographer and making suggestions.

Q. About what?

A. About the entries.

Q. Can you tell anything he said or remember anything about it? The court would like to hear what he said and did?

A. Why I remember we investigated the statute; he wanted to know what form of the statute we would follow, and I went down and sat in a rocking chair along side of him and looked up the statute relating to the recovery of this property; got down the statute relating to receiverships, and discussed the form of the writ, and all the papers were prepared there while Mr. Sachs and I were present. We then went out after we finished that; Judge Utz came to my office and looked them over and took the papers to the clerk's office, and Mr. Utz and I went to Clare's saloon on Pearl street.

Q. Is it not a fact that you didn't see Mr. Sachs after you left the court house that afternoon in order to draw up those orders until between six and seven o'clock, and about that time you passed along by the corner where Mr. Watts and Mr.

Sachs and Mr. Zier were standing talking, and you said you were on your way home?

A. No sir.

Q. Didn't you pass them there?

A. Who.

Q. Mr. Watts and Mr. Sachs?

A. On Friday we went from the corner of Pearl and Spring streets up to Seventh; Mr. Watts and Sachs and myself went from the corner up to Seventh street.

Q. I am not asking you about where you went. I am asking you isn't it true that you came up on these gentlemen at that place and that you hadn't seen these gentlemen from the time you left them at the court house when you went out to prepare the petition as directed by Judge Utz—that you hadn't seen them from that time until you met them there?

A. No, that is not true.

Q. And that was nearly half past six?

A. No, that is not true.

Q. They went home about what time?

A. It was after six o'clock; it must have been along about seven o'clock.

Q. What time did you make the demand upon Mr. Connor for this property?

A. I think it was about seven o'clock.

Q. What time was the property actually taken from the custody of Mr. Connor?

A. Along between eight and nine o'clock. I can't tell just when.

Q. Then Mr. Sachs and Mr. Watts were not in the city as far as you know at that time?

A. Not when the sheriff took the property. No sir.

Q. No, when you made the demand?

A. Well I don't believe they had hardly gotten out of the city; they may have been up at the depot at Vincennes street, but I don't believe they were out of the city.

Q. At least they were not with you?

A. They were not with me.

Q. They came back you say Saturday?

A. Yes sir.

Q. What occurred?

A. Well they came back to get up some proceedings by way of contempt against Mr. Connor and Mr. Hester, and along with Mr. Watts contempt proceedings also.

Q. Is it not a fact that they came back to respite the rule against Watts?

A. There was not any rule against Sachs.

Q. But was not Sachs acting as attorney for Watts and did you not know that that was the fact at the time and he

made a request of Judge Utz at the time to continue the rule?

A. Mr. Sachs was acting as my attorney.

Q. I asked you if you do not know it is a fact that he came back as attorney for Watts?

A. No sir.

Q. And that he himself made the motion before Judge Utz to continue that rule?

A. No sir I do not know that he did.

Q. He came back on Saturday and Watts did get the rule continued on that day until Wednesday?

A. Yes sir.

Q. Where were you and Sachs in the mean time while Watts was getting the rule continued?

A. We were first over to the Deputy U. S. clerk's office, looking for this absent order and then we went out and went through the Zier plant, that is the down stairs part of it.

Q. How far is the Zier plant located from Judge Utz's court room?

A. About four squares.

Q. What time of day was it you say Mr. Watts went with you down there?

A. I didn't say Watts.

Q. Sachs?

A. I judge along about three o'clock in the afternoon.

Q. How long were you away from the court house or away from Mr. Watts before your return?

A. Well, we went down and went through this plant, that is the downstairs part of it and looked around over it. We were gone twenty five or thirty minutes.

Q. Who was with you?

A. Mr. Sachs and I went together and the watchman was there, Mr. Smithwick, when we got there.

Q. Mr. Smithwick?

A. No sir, Mr. Ruoff, the day watchman was there instead of Mr. Smithwick.

Q. Where did you go when you returned from that inspection?

A. We went to Mat Claire's saloon and we sat down there.

Q. Did you go back to the court house after that?

A. I do not remember whether we did or not. I don't believe we did.

Q. Where did you get with Mr. Watts?

A. Mat Claire's saloon.

Q. Did they leave from there for home?

A. Yes sir.

Q. What time?

A. I think along about five o'clock.

Q. Then you had another meeting on Sunday?

A. Yes sir.

Q. You were cited on Saturday night about 9 o'clock?

A. Yes sir.

Q. You telephoned Mr. Sachs?

A. Yes sir.

Q. Did you tell Mr. Sachs anything about his being included in that citation?

A. Yes sir.

Q. You are quite sure of that?

A. I am certain about it.

Q. You asked Mr. Sachs to come over next morning?

A. Not then.

Q. When was the arrangement made for him to come over Sunday morning.

A. After I was called down to Judge Utz's office.

Q. That was Saturday night?

A. The same night.

Q. Then you called him again?

A. I did not call him. I sent word out by a young man there to telephone over. I think it from Kepley's stable.

Q. Did you send to Watts and Sachs?

A. I think both.

Q. You requested them to come over, at any fixed time?

A. Ten o'clock.

Q. That was the time you went to the court house and then adjourned to your office.

A. Yes sir.

Q. Then the matter was discussed about the preparation of the response to these citations?

A. To the rules.

Q. Was that the only discussion that occurred there that day?

A. I think so.

Q. Then on Monday you came over to Mr. Sachs' office by appointment.

A. Yes sir.

Q. You got there before Judge Utz, did you not?

A. Yes sir.

Q. He did not come there until afternoon?

A. He did not get there until after dinner?

Q. You got there between ten and eleven o'clock in the morning?

A. Yes sir I think so.

Q. What did you talk about in the forenoon, anything except a general discussion about the jurisdiction of the court and the nature of the responses to the rule.

A. I took a copy of the order I had prepared from the clerk's office, that was discussed and the affidavit upon which the rule was based was discussed. I had that with me.

Q. Did not Mr. Watts tell you to bring that copy over with you?

A. No sir, Mr. Sachs did.

Q. He told you it would be necessary for you to wait until you could get a copy and bring it over before he could tell you anything about the nature of your responses.

A. Yes sir.

Q. When you showed it to me, did he not tell you you had no response to make at all?

A. No sir.

Q. What did he say?

A. He did not say much of anything. I tried to get him to make up my response and he concluded that he could not do it, that he could not act as my attorney up here, that if he came up here, he would be put on the witness stand and have to say something against his friend Watts. He advised me to come to Indianapolis and get an attorney and finally I told him I was going to get one.

Q. Did you not say awhile ago in your examination that about five o'clock Hester told you he had the order and you phoned the contents of it to Sachs and he said you are done for.

A. Yes sir I said that.

Q. Sachs then over the telephone notified you of the fact that if that order was entered it was a settlement of the question and you were done for?

A. Yes sir he said that over the phone.

Q. That was on Sunday night.

A. Yes sir.

Q. Before the Monday morning visit?

A. Yes sir.

Q. When you got over in the office and he read the order, did he not tell you the same in effect?

A. No sir.

Q. Didn't he tell you the best thing you could do under the circumstances was to go to Indianapolis and see if you could not make a settlement of the matter with the court?

A. No sir, he said I had better get a lawyer at Indianapolis, and advised me not to get Mr. Newberger, because he did not think Mr. Newberger was the right kind of a man for this kind of a case.

Q. By the Court: Did he say what the right kind of man for this case was?

A. No, sir, he did not. What he said was that Mr. Newberger was not the right kind of a man.

Q. By Mr. Smith: Was not Morris Sachs in Mr. Sachs office at the time this order was submitted by you to Dave Sachs?

A. In the morning he was.

Q. I mean at the time the order was read?

A. I think he was there.

Q. What did Morris Sachs say about it?

A. He said we thought we had acted the fool about the matter, but he said notwithstanding that he felt that the circuit court had jurisdiction.

Q. That was simply going back to the original question of jurisdiction.

A. Yes sir.

Q. Did he not tell you that was no response to a matter like this?

A. No sir he did not say that.

Q. Or in substance anything like that?

A. Not that I remember. He may have said it.

Q. He was in there and did discuss it?

A. Yes sir and there was a good deal of talk back and forth.

Q. How did that question of costs or any contemplated costs arise in that meeting?

A. That came up late in the afternoon, when I asked them what they were going to do about the costs.

Q. Did you not at that meeting and while Mr. Watts was absent ask Joe Sachs if he thought Watts ought not to stand for it or something of that sort?

A. No sir.

Q. Did you not address your remarks in regard to that matter to Joe Sachs entirely?

A. No sir.

Q. Did you include anybody that you thought ought to be made responsible for the costs or liable therefor except Mr. Watts?

A. Yes sir.

Q. You mentioned Mr. Sachs' name?

A. Yes sir.

Q. You called both of them by name at the time?

A. I probably used the word "they" had agreed. I may not have said "Watts and Sachs."

Q. Did not Joe Sachs say to you at that time that if you were going to discuss the question as to Watts you had better have Watts present and did he not say that he would go in the other room and phone him?

A. No.

Q. Nothing of that kind occured?

A. I heard nothing of that sort.

Q. You say that Watts did come there in a few minutes thereafter?

A. I said Mr. Watts came there. I did not say he came a few minutes after, any such statement as you have just made.

Q. He came over in the afternoon?

A. He came over in the morning and afternoon both.

Q. But you and Dave Sachs and Morris Sachs were in the office there sometime in the afternoon before Mr. Watts did come in? And Joe Sachs?

A. I think we were yes sir.

Q. Did not Judge Utz in that conversation when you were talking about the question of cost of defending these rules say that it would cost several thousand dollars and did not Judge Utz say he had money in court that could be used on the matter?

By Mr. Kealing: Where was that?

Q. At that same Monday interview.

A. No sir he did not say that.

Q. What time was it on Monday that Judge Utz came over?

A. I do not know what time he came over. He was there at the office after D. A. Sachs and I returned from lunch, sitting there by himself.

Q. How long did you gentlemen remain there? In the afternoon?

A. I think along until half past four o'clock.

Q. You know John Watts?

A. Yes sir.

Q. He was there in the morning of that Monday's interview, was he not?

A. He was.

Q. Did not John Watts early in that interview in the morning say to you "Mr. Kelso, I want to know if you know of any act or anything done on the part of my brother W. W. Watts, that in the slightest way indicated after his return from Indianapolis that he desired the state court to try to retain the possession of this property or in any way further interfere with the jurisdiction of the Federal Court?

A. Yes sir he said that to me.

Q. Did you not tell him you did not know of any act or transaction at all?

A. No sir.

Q. Or to that effect?

A. No sir I told him just what his brother had done.

Q. Didn't you tell him that you did not know anything he had done to the effect and that you were willing to give an affidavit to that?

A. No sir.

Q. Was not that matter mentioned again in the afternoon after Judge Utz was present? And was not the same question put to Judge Utz in your presence by John Watts?

A. Something of that kind was said, yes.

Q. And did not Judge Utz make the same statement to John Watts in regard to W.W.Watts, as you had made, that is that he did not know anything at all that would indicate after the return from Indianapolis that W. W. Watts was trying to get the state court to retain possession or advising the retention of possession by the state court or the taking of the property from the U. S. court receiver?

A. I never said any such thing.

Q. Did Judge Utz say it?

A. No sir.

Q. What did you say?

A. I told him about what his brother had done, that his brother was all the time protesting about it and saying that he desired to turn the property over to the United States Court according to his promise, but that notwithstanding those things, he was advising about the law and giving his opinion that the law was against the contention of the U. S. Court. I told his brother that.

Q. Is that all you told him?

A. Practically so yes.

Q. Was it not immediately after this conference in the afternoon that John Watts asked that his brother withdraw from the conference?

Q. I do not know whether that occurred in the afternoon or morning about the withdrawal from the conference.

Q. Whether it occured in the afternoon or morning, did it not occur at one time or the other just after John Watts had asked that question either of you or Judge Utz?

H. I cannot say in regard to that, but I know that he did suggest that his brother retire from the meeting.

Q. There is one matter that I neglected to ask you in regard to that I want to understand more fully. You say you employed Dave Sachs to represent your trust, that is your receivership?

A. Yes sir, to represent me as receiver.

Q. As receiver of that estate?

A. Yes sir.

Q. When was that employment made?

A. Friday.

Q Where?

A At my office

Q. That was the first suggestion of it?

A. Yes sir.

Q. Who was present?

A. Judge Utz, Mr. Sachs and myself.

Q. Where was Mr. Watts?

A. He was out somewhere, I do not know where.

Q. I will ask you if it is not a fact that you on Friday said to Mr. Sachs I would like to employ you to represent my trust, and that Mr. Sachs said to, "I have got all the business I can attend to in Louisville and I do not desire to appear here. I simply come over here to represent my friend in this matter and they have a good bar here and if you cannot get a lawyer that suits you here you can go to Indianapolis, there are men of ability there." And if you did not remark "I don't know whether I need a lawyer or not. I am a sort of lawyer myself and I reckon I can attend to this without any lawyer anyhow."

A. No sir. I made no statement, but on the contrary I said to Mr. Sachs that Judge Utz and I had discussed the question of whether we would come up here and employ Charles Smith and we had concluded to employ Mr. Sachs as he had been through several bankruptcies and he said he did not want to force himself in, but if I desired he would accept the employment and stay with me to the end.

Q. What retainer did you pay him?

A. I did not pay him any.

Q. You gave him no indemnity for fees in any way?

A. No sir, I understood that Mr. Sachs was rather representing Mr. Watts in trying to keep the possession of this property in the Floyd Circuit Court

Q. We do not care for your understanding except you give us the facts on which you base it.

A. I cannot give you any other facts that I have stated.

Q. You had paid him no fee?

A. None at all.

Q. You had executed no obligation to him promising any fee?

A. No sir.

The Court: That is repetition, you are consuming too much time in that way.

By Mr. Fairleigh:

Q. After Mr. Watts' return from the meeting before this court on the 16th and 17th of February, did you hear him say or do anything or advise anything which would indicate that he did not intend to do everything to have the property turned over to the New Albany Trust Co. to Mr. Connor the receiver of this court?

A. All I can say is this: that I heard Mr. Watts declare that he intended to carry out the promise he had made to the U. S. Court; but I heard Mr. Watts give expressions of his

opinion as to the law which was contrary to the law as laid down by this court quite frequently.

Q. But he always said and his acts always indicated that he really intended that the New Albany Trust Company so sar as he was concerned, as its attorney or otherwise, should turn over that property to Mr. Connor receiver.

A. I do not know what his acts indicated. I am not ready to give any opinion on that proposition. But Mr. Watts did declare that he intended to turn the property over, but he would give opinions contrary as to the law all the time.

Q. Do you know of any acts he did other than giving his opinion of what the law was touching the retaking of the property by you as receiver from Mr. Connor as receiver?

A. No sir.

Q. He did not do anything at all, except simply to express his opinion of what the law was?

A. That is all I know of except that he agreed to pay my expenses at one time.

Q. What do you mean by that?

A. I mean that he said if I was at any expense in this matter that he and Mr. Sachs would see that it was paid.

Q. Where was that?

A. At my office.

Q. What did that involve?

A. I suppose it involved whatever expense I might be put to if I was guilty of contempt of this court.

Q. What were you expecting to do at that time?

A. To contest the jurisdiction of this court?

Q. How?

A. I don't know how.

Q. Was it in his mind that you should use any force of any kind?

A. Not that I know of.

Q. Was it in your mind?

A. No, sir.

Q. That was not in contemplation of the parties at all at that time?

A. Not to my knowledge?

Q. You had no suspicion, no sort of notion that that would occur at that time?

A. No sir, I thought there would be lawsuits or something of that kind.

Q. Exactly, but was it not suggested that the proper way was to intervene in this case and have the question decided?

A. I don't think anything of that kind was suggested.

Q. Was not that the idea?

A. I don't know what the idea was, but it was not suggested.

Q. But there was no intention by anybody that you should take it by force.

By the Court:

Q. When was the determination arrived at to take it by force?

A. After the New Albany Trust Company had turned it over to the receiver. The understanding was that the New Albany Trust Co. was to hold the property until I could be appointed receiver without any trouble before this court got possession.

Q. Did Mr. Watts know that.

A. I do not know whether he did or not.

Q. Was he present when that was talked about?

A. I don't think he was.

Q. By Mr. LaFollette: You stated awhile ago that after you were requested to become receiver you suggested as you appeared of record as an attorney for some of the creditors of M. Zier and Company that you could not while such attorney be the receiver, and that it was then suggested to you that you withdraw from that and that such an entry was made and attached to the entry that had been made bearing date the 14th, I think, of February?

A. Yes sir.

Q. And that that was entered as of that date?

A. Yes sir.

Q. As a matter of fact it was not done on that date?

A. No sir it was not.

Q. Who is your clerk?

A. Charles B. Scott.

Q. Do you know the signature of your clerk?

A. I do.

Q. You may examine that certified copy and the signature thereto and state whether or not that is the signature of the clerk of the Floyd Circuit Court?

A. No sir, this is not Mr. Scott's signature: this must be the signature of one of the deputies.

Q. And examine and from your knowledge state whose signature it is.

A. I should say that Edward Martin put that signature there.

By the Court:

Q. Is he a deputy clerk?

A. Yes sir.

Q. By Mr. LaFollette: And from the signature thereto you would say that this certificate of the clerk and the signature as it appears is official?

A. I think so.

Q. By the Court: Of the proceedings of Februray 14th?

A. I think this includes some other proceedings prior to that time.

Q. But including the proceedings of February 14th?

A. Yes sir, it includes the proceedings of February 14.

By Mr. Fairleigh: Is there any doubt of that?

The Court: There are two different records here. It shows that the records of the Floyd Circuit Court were mutilated. The clerk of the Floyd Circuit Court has made two certificates, one to one state of facts and another to another. One of these contains considerably more than the other. The closing paragraph of this record appears as follows:—"And Jacob Hoerter and George H. Hester, such attorneys, being now present in court and Hester having been heard in opposition to said petition and having notice of the entry of this order, it is now ordered that no other or further notice be given the said Inland Steel Company, the Dey Time Register Co. petitioners in said bankruptcy proceedings." Now that is certified as a true and complete copy of the proceedings.

Mr. Miller: We have a certified copy of that record with the certificate just as you have there, dated the 14th.

The Court: Then in this other certificate immediately following is this,"And comes now C. D. Kelso and asks leave to withdraw as attorney of record for the following-named parties, United Gas and Electric Co., United States Tube Co., the Indiana Water Company and Simon David; and the court now permits the said C. D. Kelso to withdraw therefrom." That is the end of this record and then follows the certificate.

By the Court:

Q. Is that the part that was put into that entry as of the date at Sachs' suggestion because he wanted a record?

A. Yes sir.

Q. And that is the point you referred to awhile ago that was made on the 20th and added to the record as it had been made up formerly and caused to appear as part of the record of the 14th and while the court was still in session?

A. Yes sir.

Q. What is the date of that?

A. The 14th.

Q. What is the date of the second?

Mr. LaFollette: The date of the certificate is the 20th of February, but it purports to be a record of the 14th of February.

Mr. Kealing: One certificate is dated the 14th and the other the 20th.

Mr. LaFollette: And this record that has not the addenda was filed in the U. S. District Court on the 16th of February.

The Court: And the other was filed in this court on the 21st day of February.

Q. At the time that these matters were being discussed in your office along about the 19th and 20th of February, there was something said about your being invited to go down to some cafe or saloon on the street. Did you go with the company?

A. No sir, not then.

Q. You did not go?

A. No sir.

Q. Did you go to that place afterwards?

A. Yes sir.

Q. Whom did you find there when you did go of these parties if you did go if any of them?

A. I think I found Mr. Watts there and Joe Sachs there —I went with D. A. Sachs and I think Judge Utz was there.

Q. Did you have any talk there in the room where you went about these proceedings?

A. Oh I think the law was discussed but most of the time was spent in listening to some stories being told there.

Q. Was there anything additional there said in regard by any one in regard to the proceedings that had been had in the court before Judge Utz?

A. The reason why the matters were delayed was because we were waiting on the Trust Co. to make up its report. The Trust Co. had agreed to make up a report just as soon as it could and it finally brought in a little piece of paper about that long showing the trust estate was indebted to it in about the sum of $23.00.

Q. Was that accepted as the report or refused by Judge Utz?

A. It was not accepted and they promised afterwards to make a detailed report.

Q. Was anything said to you during the proceedings by Henry Jewett the vice-president of the Trust Company in regard to your proceedings?

A. Yes sir.

Q. What did he say?

A. Saturday morning at the postoffice he met me and said we have taken up too much time discussing the law, that we ought to have sent the sheriff and taken the property before it was delivered.

Q. What if anything did Charles L. Jewett say to you about it?

A. We were sitting in Mat Claire's saloon and he came up out in the little recess in the back part of it and said that he was surprised that Judge Utz did not catch his eye, that he wanted him to send the sheriff out there and get the property before it was delivered.

Q. What did you do if anything, in the way of making an affiidavit against the receiver appointed by the U. S. Court and at whose direction did you do that if any one?

A. Judge Utz. I made the affidavit against Mr. Connor at the request of Judge Utz.

Q. Did D. A. Sachs say anything to you about that?

A. He said it ought to be done.

Q. Then you made the affidavit?

A. Yes sir.

Q. Was Mr. Watts present at that time?

A. I do not know. I do not believe he was. Mr. Watts did not spend a great deal of time with us.

Q. Was there anything said to you about including in that affidavit Mr. George Hester who had appeared as attorney for one or more of the parties in the bankruptcy proceedings?

A. And I declined to make him in it. I refused to make the affidavit against him.

Was that conversation had at the same time when Mr. Sachs was present?

A. Yes sir, I think so.

Q. What, if anything, did Mr. Sachs say about that?

A. He said we ought to get Hester.

Henry E. Jewett, recalled, and examined by Mr. LaFollette, testified as follows:

Q. State whether or not the New Albany Trust Co. as receiver for M. Zier & Co. had in its possession all of the property of M. Zier and Company?

A. So far as the Trust Co. knew.

Q. Had you made an inventory of the property?

A. Yes sir.

Q. And from whom did you get the information as to its being the entire property of M. Zier and Company?

A. I did not assist in making the inventory, it was made by two appraisers and Mr. Urey, the secretary. I was informed that the secretary went over the plant and furnished the information.

Q. There was no other property came to your notice or knowledge after that?

A. I do not remember any.

Cross-examined by Mr. Miller:

Q. You were here on the 16th and 17th with Mr. Watts?

A. Yes sir.

Q. I wish you would tell us what was done and said here at that time.

A. I could hardly undertake to tell all that was said.

Q. I don't want it in full, but just tell the general tenor of it, of course, not for the instruction of your Honor, but

because we want it in the record. I have no hesitation in saying with perfect candor that we want to show that these gentlemen went away from here with the impression that this court was satisfied it had the jurisdiction and it proposed to coerce to the enforcement of that jurisdiction if necessary. If that general fact is admitted, I do not care to ask any questions:

By the court: Whom do you expect to admit it?

Mr. Miller: The gentlemen on the other side. They are representing the prosecution here. I suppose the case is like any other where there is a prosecution on the one side and the defense on the other.

The Court: I will cut it short this way. You may ask him as to what their impression about it was, but these proceedings in this court took all of one afternoon, beginning at three o'clock and lasting three hours and a half and lasting all the forenoon of the next day. You may ask him what impression he had, but it will take too much time for him to detail what was said.

To the Witness: You heard my statement. You may state what were the impressions you carried away with reference to whether this court was satisfied that it had jurisidiction and proposed to enforce its jurisdiction in the taking of that property if necessary.

A. I understood this court was satisfied it had the jurisdiction and that the state receiver would be expected to give up the property. I took no part in the first day's proceedings at all. In the morning I stated that the Trust Company would turn over the property to Mr. Connor as receiver of the Federal court.

By Mr. Miller:

Q. Did you not understand what you have stated, that this court was prepared to and would enforce its jurisdiction by taking the property out of the hands of the state receiver, if necessary?

A. I think the court stated that he did not want to come to New Albany with a club, but if necessary he would have to do it to sustain the jurisdiction of this court.

Mr. LaFollette: I want to introduce the certified copy of the transcript of the proceedings in the Floyd Circuit Court which was filed in the U. S. District Court on the 16th day of February, 1903, as bearing the certificate of the clerk of the Floyd Circuit Court under date of February 14th, 1903.

Mr. Miller: Let me ask you if that differs from the other transcript purporting to cover the same proceedings except in the addenda to the order of the 14th.

Mr. LaFollette: I think they are the same except that I want to introduce this other transcript.

Mr. Miller: As to that you may say you just want to put in the addition to that order.

Mr. Kealing: Just introduce the certified copy.

Mr. Miller: I do not think the court ought to allow duplicate records.

The Court: In this instance the proceedings of the Floyd Circuit Court are somewhat on trial. Here is a certified transcript with a certificate of the clerk that certain proceedings were had. Six days later some additional proceedings appear. You yourself characterized that as a forgery of the record, during this morning. Now it is proposed as I understand it to show that that forged record was certified with all the authority and solemnity that the genuine record was. This court is interested in knowing how far the proceedings down there were fraudulent.

Mr. Miller: I have no objection to the District attorney making a statement which shall go into the record showing the fact that your honor has stated.

The Court: That might be sufficient, but the record is the best evidence.

Mr. LaFollette: The question is whether the whole record or so much of the record that shows the order that purports to have been made by the Floyd Circuit Court on the 14th should go in? I am free to say that my idea now would be to introduce that part of the transcript that was filed on the 21st day of February that shows the order of the 14th, and the certificate thereto.

The Court: That is all I have admitted.

Mr. Miller: And to that I have no objection.

Mr. LaFollette: That I desire to offer, which includes the addition made to that record as testified to by Mr. Kelso and the certificate that appears to that.

Then I want to introduce further a copy of the writ addressed to the Sheriff of Floyd County which is attached to and is a part of the pleadings which is marked "copy" and purports to be a copy of the writ issued by the Floyd Circuit Court and which is a part of the last page of the record filed in this court on the 21st of February, 1903.

I desire to introduce in evidence that part of the exhibit B filed with the response of William W. Watts in this case, entitled Joseph T. Ryerson & Son, vs. M. Zier & Company in the matter of the receivership of said defendant, M. Zier & Co., New Albany Trust Company receiver, and reads, at the beginning, "now comes the United States Tube Company, by D. A. Sachs, its attorney and so forth" and is signed "respectfully submitted, United States Tube Company by D. A. Sachs, its attorney," and sworn to by D. A. Sachs, on the 20th day of February, before Bertha L. Scott, Notary Public.

The Court: What is that?

Mr. LaFollette: This is the petition which was filed in the Floyd Circuit Court, not in the court, before Judge Utz on the 20th of February, asking the removal of the New Albany Trust Co. as receiver and also that it be cited to appear and show cause why it should not be punished for contempt and that it be required to file its account immediately and turn over to its successors all the property it now has in its hands as such receiver belonging to said M. Zier & Co.

The Court: Do you object to that?

Mr. Fairleigh: Not at all. We expect to introduce all of that record. That is filed with our response as part of it.

Mr. LaFollette: We also introduce in evidence a certified copy of the adjudication of M. Zier & Co. as bankrupts.

Mr. Fairleigh: We object to that. When was that?

Mr. LaFollette: On the 9th of March, 1903.

The Court: You object to that?

Mr. Fairleigh: It cannot affect this transaction as it occured afterwards. It was a potentiality at that time, but it had not been done.

Mr. Miller: In some of the decisions, the court at some length goes on to show the difference between the present law and the law of 1867 in that it is held that the title of the property does not pass at the adjudication under the present law whereas it did pass under the old law at the time of filing the petition. I do not suppose it can do much harm one way or the other.

The Court: Then why take up time discussing?

Mr. Fairleigh: It is not necessary to encumber the record.

The Court: I am not sure but what the entire record of the bankruptcy proceedings ought to be introduced in evidence.

Mr. LaFollette: We offer in evidence the files, petitions and orders in the bankruptcy proceedings of M. Zier & Co.

Mr. Fairleigh: Up to when?

Mr. LaFollette: Up to the adjudication?

Mr. Fairleigh: We object to so much as includes the the orders made in the bankruptcy proceedings after the citation. As to the other we have no objection.

Mr. LaFollette: I think there would be force in that when we offer the adjudication. While it is for some purposes only an adjudication from the date it is entered, still it relates back to the time of the commencement of the proceedings as to the question of his being a bankrupt.

Mr. Fairleigh: We do not want to make any further objection.

The Court: You must either withdraw the objection or Mr. LaFollette will be heard.

Mr. Fairleigh: We cannot withdraw it.

Mr. LaFollette: The reason why that should be included and allowed is that the judication for some purposes and for purposes pertinent to this inquiry relates back to the time of filing the petition in bankruptcy and I think all ought to go in the record.

The Court: You have nothing further to say, but stand on your objections?

Mr. Fairleigh: I have nothing further to say.

The Court: Objection overruled.

Mr. Miller: We reserve an exception. The Government here rested.

W. W. Watts, called in his own behalf, being duly sworn and examined by Mr. Farleigh, testified as follows:

Q. You are Wm. W. Watts, defendant in these proceedings?

A. I am.

Q. Where do you live?

A. Louisville, Ky.

Q. What is your occupation?

A. I am a lawyer.

Q. Practicing lawyer?

A. Practicing at Louisville.

Q. How long have you been practicing law?

A. Since the fall of 1886, I think.

Q. I wish you would tell the court the circumstances attending your employment as attorney of Joseph T. Ryerson & Son, out of which grew the institution of the suit in the Floyd County, Indiana, Circuit Court, in the name of Joseph T. Ryerson & Son against M. Zier and Co?

A. It was on the morning of the 30th of December, 1902, that Mr. Jackson, whom I should say was an assistant credit man to Ryerson & Son, came into my office at Louisville and employed me to take charge of the claim of Ryerson & Son against M. Zier and Company at New Albany, and discussed with me what should be done. After that discussion I telephoned for Harry Jewett and he finally came over to the office and I told him we were going to apply for a receiver, and he finally said he thought there was nothing else to do but to have a receivership.

Q. Harry Jewett represented M. Zier & Co. as you understood it?

A. Yes sir.

Q. Suit was filed accordingly?

A. Suit was filed accordingly.

Q. On that day?

A. On that day before Judge Utz sitting in chambers, and a receiver appointed, qualified and possession taken on that day.

Q. As the record shows. When did you learn that a petition in involuntary bankrupty had been filed in the United States District Court for the District of Indiana against M. Zier & Co. by the Inland Steel Co. and others?

A. I think it was only a day or two prior to the 13th of February last.

Q. When did you learn that the United States District Court in that bankrupt proceeding had appointed a receiver for the property and assets of M. Zier & Co.?

A. It was either on the 12th or on the 13th; because on the 13th I went over to New Albany to look over the situation and see what was to be done. I am not sure whether I knew of the receivership on the 12th or whether it was on the 13th that I learned it after I got there, but I went over for the purpose of the bankruptcy proceedings.

Q. When you got over to New Albany on the 13th, what did you learn with respect to the appointment of a receiver in the Federal Court?

A. Mr. Connor had been appointed receiver and wanted possession of the property and that brought about a clash which I then undertook to avoid.

Q. That was on the 13th that you learned that? Mr. Connor was in New Albany?

A. Yes sir.

Q. Was he in New Albany on that day or not?

A. I think he was.

Q. Do you remember whether you saw him on that day or do you know?

A. I am not certain whether I saw him. I spoke with Harry Jewett about it and I believe Mr. Jewett said he had seen him.

Q. Tell the court all you did about it?

A. I was at the office of Messrs. Jewett and Jewett and I first asked Harry Jewett what he thought of my telephoning to Judge Anderson and finally asked Col. Jewett and Col. Jewett said he thought it was the proper thing to do and I finally, over the long distance telephone made connection with Mr. Butler's office, that is the office of the clerk of this court—Do you want the details of that matter?

A. Yes.

Q. I asked that Judge Anderson be called to the telephone and Judge Anderson declined to come, so Mr. Butler said. I then told Mr. Butler that the appointment of a receiver in the Federal Court had brought about a clash of jurisdiction, which I thought ought to be avoided, and I believed Judge Anderson was not acquainted with all the facts and I wanted to come up to Indianapolis after getting some proper order from Judge Utz for the purpose of pre-

senting the matter to Judge Anderson so that he could see the facts as they were. Mr. Butler reported back to me after I held the telephone for some little time that Judge Anderson would see us on the Monday following, would see us, and that I should notify Mr. George H. Hester, one of the attorneys in this matter, of that fact.

Q. Did Mr. Hester represent the receiver?

A. Yes sir.

Q. Of the Federal Court?

A. Of the Federal Court and also these petitioning creditors in the banruptcy matter and some of the creditors in the state court matter. I immediately went from the telephone to the stenographer in Mr. Jewett's office and dictated a notice to Mr. Hester notifying him that I had telephoned as stated in substance and effect and further that Judge Anderson would not insist upon the enforcement of the order until we could be heard on Monday, and in the meantime I would go before Judge Utz and get some proper order—I don't remember exactly the wording of it, but it was substantially that. The notice has been heretofore filed in these proceedings and of course it speaks for itself. I also went to Judge Utz in chambers, I believe, or perhaps in his court room, and told him what I had done and told him that I had said over the telephone that I was to come before him and get some proper order and he said, "I think that is a right proceeding. I do not think Judge Anderson has been fully advised and I think it would be proper to follow that course. I felt that I was the attorney for Judge Utz's receiver and I was bound to submit a matter of that kind to him. I then went back home.

Q. Back to Louisville?

A. Yes sir. And I prepared—I believe I first ordered practically an entire copy of the record as it stood. I ordered a good many parts of the record and I then went to my office at Louisville and worked on the petition to be filed before Judge Utz and the order and pleadings that were to be filed up here before this court. On Saturday morning I went over to Judge Utz's court and as I got into the court room Harry Jewett said, "Here is a petition"—

Q. Was the court in session?"

A. Court was in session. "Here is a petition which Mr. Hester has filed and you should look at it." I looked at it and found a petition of Mr. Connor as receiver under the order and appointment by this court in which he set forth the order of his appointment and qualification and also sought the property that was in the hands of the State Court receiver. That petition has disappeared. It is not in the record down in the Floyd Circuit Court and I can not state

exactly what that petition shows, but as near as I remember it, what I have stated was in substance its contents.

By the Court:

Q. You say that Mr. Jewett handed it to you?

A. Yes sir.

Q. What did you do with it?

A. I read it over and there was something about it—I had just been through a case where the question was up—a similar question—and I wanted to know what position Mr. Hester was going to take with respect to that petition. I felt that if it was a general appearance there was no occasion for coming before this court. If it was not a general appearance, but a special appearance, then perhaps he would have to come before this court and I arose to my feet and stated to Judge Utz the fact that that petition had been filed.

Q. Was Mr. Hester there?

A. Yes sir. And thereupon I asked Mr. Hester to say whether his pleading constituted a general appearance or a special appearance. Mr. Hester declined to do it, saying that the paper spoke for itself. I then submitted to the Court or filed the petttion which I had and which had been verified.

Q. Was there any restriction of the petition of Connor filed by Mr. Hester?

A. I think not.

Q. (By the Court): Any what?

Mr. Fairleigh: Any protestation or restriction as to limited appearance.

Q. (By the Court): You said Harry Jewett handed it to you and it disappeared. I want to know what you did with it?

A. I took it before Judge Utz, argued it and left it there. Gave it to the clerk and when I went back from here and asked for the petition I was informed that Mr. Hester had taken it. That petition was called for here in this court several times, but it could not be found.

By Mr. Fairleigh:

Q. You filed a petition you had prepared before Judge Utz on that day?

A. Yes sir.

Q. And took the order which the record shows?

A. Yes sir. And thereupon I brought with me a certified copy of that petition and the order thereupon and filed it before his Honor Judge Anderson in this court and a pleading showing the facts with respect to the matter down there and showing in effect the order of that court and filing divers certified copies of that record, beginning with the filing of the petition of Ryerson & Son originally for the appointment of a receiver, the order on that petition, and the

report and petition of the New Albany Trust Co. receiver filed on January 16th upon which there was a subsequent sitting of the Court on January 24th when all of the creditors were present and the order made at that time and the several notices, two notices I believe to the creditors in this matter. I filed all those papers before this court and we began argument of the matter about two o'clock in the afternoon. Do you wish me to proceed?

Q. Proceed right along.

A. I argued the matter from about two o'clock in the afternoon until about half past five and then took it up in the morning about nine o'clock and continued for a while, whereupon Mr. Hester took up the argument and Harry Jewett addressed the court about noon and we adjourned for lunch and at two o'clock we were back before the court. A question arose early in the argument as to my having been guilty of a great discourtesy to this court. I disclaimed any intentional discourtesy to the court and after arguing the matter for all the time that we did argue it, finally after Harry Jewett had said—after he had discussed the matter—

Q. In what point was it regarded that you had been guilty of a discourtesy, in what respect?

A. His Honor Judge Anderson thought I had been guilty of a discourtesy to his court because I had obtained in effect a truce in the proceedings.

By the Court:

Q. On Friday?

A. On Friday. And in the mean time had, without any notice to anybody gone before Judge Utz and gotten the order directing me to come here and enjoining the different officials and so forth.

By Mr. Fairleigh:

Q. That was the point?

A. At the time, I insisted with Mr. Butler that I had said to him over the telephone that I would go before Judge Utz for the order. Mr. Butler said I had said nothing of that kind over the telephone to him, and it was a question of veracity between us and the Judge announced that he would believe Mr. Butler.

Q. Proceed.

A. At two o'clock on Tuesday—Mr. Jewett addressed the court as we were approaching noon on Tuesday, and then at two o'clock on Tuesday Mr. Jewett again addressed the court and after being questioned to some extent by Judge Anderson said that he would, as vice president of the New Albany Trust Co. turn over the property. Thereupon I took the floor and said to the court in effect, I wont undertake to repeat exactly my words, that I felt very keenly the charge

of discourtesy, and I proposed to eliminate from this case any evidence of any such thing and that I would ask leave of the court to withdraw the copy of the petition which had been filed in the Floyd Circuit Court on that Saturday morning, the copy of the order thereon and the pleading which I had filed before this court. The court gave me that leave and I withdrew those papers. I further said I did not think Judge Utz would be willing to rest under a charge of discourtesy and I would move him for an order expunging the order of the Floyd Circuit Court covering the matters that had taken place as I have illustrated on Saturday.

Q. What was the result of the argument here? Was there any suggestion made by this court about giving up the property or to you as attorney for the Trust Company about your advice and what was said?

A. Mr. Jewett was finally asked by the court whether he as the vice-president of the New Albany Trust Co. would deliver up that property. Mr. Jewett finally said that he would. He did wish to go before Judge Utz, but he finally said he would deliver the property irrespective of what Judge Utz said about it. I was then asked whether I would advise the giving up of the property and I said I would. I was asked in my capacity as attorney for the New Albany Trust Co., as receiver, and I said I would so advise.

Q. When did you return to New Albany?

A. We all went back home on Tuesday afternoon, the 17th, arriving about eight o'clock at night.

Q. When you got back to Louisville, what did you do in respect to these matters?

A. On the way to Louisville I had said to Mr. Jewett that I felt very much humiliated over what had occurred and I was going to ask Mr. Sachs to go over with me to explain the situation to Judge Utz and as far as possible try to square me with Judge Utz. That was the effect of it. I told him I felt it ought to be done and I wanted to be square. I wanted Judge Utz's good opinion, and other words to that effect. Next day on Wednesday, I asked Mr. Sachs to go with me and Mr. Sachs consented for the purpose of explaining the situation to Judge Utz as far as might be. And of saving me if necessary from Judge Utz's wrath, as far as he might be able to do it. The closer I got to New Albany the more did I question whether I had done the right thing by agreeing to advise the turning over of the property. That was the situation as I tell it to you and I went over to New Albany and arrived there at about three-thirty in the afternoon.

By Mr. Miller:

Q. Wednesday?

A. Wednesday. And we went before Judge Utz and I introduced Mr. Sachs to Judge Utz and Judge Utz to Mr. Sachs and I explained to Judge Utz what had occure here; what Mr. Jewett had agreed to do and what I had agreed to do. The result of that conference was that Judge Utz was very much exercised about the matter and finally said he wanted a conference with the lawyers in the case and asked us to go by and notify several of the counsel. Mr. Sachs and I went over to Mr. Jewett's office, we did not know where Mr. Kelso's office was, or where Mr. Stotsenberg's office was, or any of the other offices, except perhaps Mr. Hester's. And Mr. Jewett called up Mr. Kelso's office.

Q. Did you go from Judge Utz to Mr. Jewett's office?

A. Yes sir. And I told Mr. Jewett that Judge Utz wanted a conference. On Mr. Jewett's telephone message to Mr. Kelso, Mr. Sachs and I went over to Mr. Kelso's office. It was quite late by that time and we asked Mr. Kelso to notify the other counsel saying that Judge Utz wanted to see them.

Q. When?

A. Nine o'clock next morning. Mr. Kelso said I have just had a telephone message from Judge Utz in which he wants to see me for an interview at eight o'clock in the and thereupon he questioned me as to what had taken place at Indianapolis and I told him.

By the Court:

Q. Who questioned you?

A. Mr. Kelso and I explained the situation as it occured here and just as it occurred here. He wanted to know what I proposed to do with the property and I told him I proposed to give it up as far as I could. That the court had my promise, I won't say promise, my statement here. Mr. Kelso made some remarks about that matter and intimated that I ought not to have done it, that I ought not to have given it up. And with that we left.

By Mr. Fairleigh:

Q. Was there anything there said about the appointment of a new receiver?

A. Not at all.

Q. Was it suggested between you in any way?

A. Not at all.

Q. Who was with you?

A. Mr. Sachs.

Q. Anybody else?

A. No sir.

Q. Was there anything said about the New Albany Trust Co. resigning as receiver?

A. Not at all, on the contrary nothing of that kind was said. Mr. Kelso did tell us how he refused to sit down before

one of the Federal Judges, matters of that kind which had nothing to do with the case, as an illustration of why I should not have done as I did up here.

Q. You say there was nothing said about the appointment of a receiver, or the removal of the New Albany Trust Co. was there anything said about anybody paying the costs of any receivership?

A. No sir.

Q. Was there anything at all said about that?

A. Not at all.

Q. Can you think of anything upon which any misapprehension could have arisen—was there anything said at all about it?

A. Do you mean at that conference?

Q. At that particular time.

A. No sir, I cannot. Mr. Kelso knew I was arranging for preparations for the defense in the main bankruptcy proceedings.

Q. How did he know that?

A. Because I told him so.

By the Court:

Q. I do not understand what you mean by "defense in the main bankruptcy proceedings."

A. I mean that under section 18 of the bankruptcy act, as creditors, Ryerson & Son proposed to file an answer and defend against the original petition in bankruptcy in this court.

By Mr. Fairleigh:

Q. Did you go home after that?

A. Yes sir, we went home.

Q. Was anything said about notifying Mr. Stotsenberg—did Mr. Kelso say anything about notifying Mr. Stotsenberg?

A. Yes sir, I asked him to notify Mr. Stotsenberg, and he said they were not on good terms.

My recollection is he said he did not speak to Stotsenberg.

By the court:

Q. You mean that you were for Ryerson and Son to contest the allegations of preference in the bankruptcy proceedings?

A. Yes sir. I do not know, Your Honor please, that it was to be a contest of elections and preferences as much as it was either on the basis of election of remedies or estoppel as given in several opinions, which I have presented to your Honor.

By Mr. Fairleigh:

Q. Go on and relate the story after that. How long did you stay at Mr. Kelso's office?

A. Not a great while.

Q. You can not be accurate, but about how long?

A. Perhaps a half an hour or may be not a full half hour. Just a little while.

Q. What time did you return to Louisville that afternoon?

A. I think we got home in the neighborhood of six o'clock.

Q. Did you go immediately from Mr. Kelso's office to Louisville?

A. Yes sir.

Q. Did you stop anywhere on the way?

A. No sir; it takes about forty five minutes to get over on that road.

Q. What did you do next day?

A. The next day we went back over there, Mr. Sachs and I.

Q. That would be Thursday the 19th?

A. Yes sir. On Wednesday night I prepared a paper a copy of which is found in the record, in which I reported for the New Albany Trust Company that we had appeared before this court in obedience to that court's order and that there was no change in the order and that the order remained then as it was and I moved for leave to withdraw or expunge that part of the record in that cause which was made up on that Saturday.

Q. The 24th?

A. No on the 14th of February. That is, I sought to withdraw the petition I filed on that day and the order entered thereupon and have them expunged.

Q. Did you have a paper prepared when you went before Judge Utz; the evening before or a memorandum on yellow paper?

A. No sir, I prepared that on Wednesday night at my rooms in the hotel and filed it on Thursday morning before Judge Utz.

The court thereupon took a recess for lunch.

WEDNESDAY, MARCH 11, 1903.

AFTERNOON SESSION.

The Court met at two o'clock pursuant to adjournment.

The direct examination of the witness William W. Watts was resumed as follows:

Questions by Mr. Fairleigh:

Q. Mr. Watts just before the noon adjournment you stated to the Court that you had prepared in your room at the Willard Hotel in Louisville a petition to be filed—a petition or statement to be filed in the Floyd Circuit Court the following

morning, namely, Thursday morning. Did you go to New Albany Thursday morning?

A. Yes sir.

Q. Did you go to the Floyd Circuit Court?

A. I did.

Q. Did you go directly to the Court in the train or cars on which you went?

A. Yes sir, I went directly to the court house.

Q. Did you find Judge Utz in his chambers at the court house?

A. Yes sir.

Q. Was anyone else there when you got in?

A. On Thursday morning?

Q. Yes.

A. Yes sir, Mr. Kelso was there.

Q. Who accompanied you to Louisville, or New Albany, if anybody?

A. Mr. David Sachs.

Q. Well now tell the court what happened before Judge Utz that morning in his chambers at the court house?

The Court: Excuse me, was that the Thursday after they had been here to Indianapolis?

Mr. Fairleigh: Yes, sir.

The Court: The 19th?

Mr. Fairleigh: Yes.

A. You refer, Mr. Fairleigh, to Thursday, the 19th of February?

Q. Yes.

A. My recollection is that we got there in the neighborhood of ten o'clock in the morning. Judge Utz and Mr. Kelso were there.

Q. Did you file the petition before Judge Utz which you had prepared?

A. Yes sir, I filed that statement, prefacing its filing by a reiteration of what I had said the day before as to what had occurred at Indianapolis, explaining to Judge Utz why the order remained—the order of this court remained unchanged, and why I sought to expunge so much of the record as referred to our coming here to Indianapolis. It wasn't a great while after we were there, I think, that Harry Jewett came in, Henry Jewett.

Q. Was that statement signed by you as the attorney for the New Albany Trust Company?

A. It was.

Q. Do you know whether any other or separate paper was filed by the New Albany Trust Company that was not signed by you?

A. Yes, the New Albany Trust Company filed a report showing substantially the facts as they occurred here, and

what it had said it would do and what it proposed to do and as I remember it asked leave that it might do it.

Q. What action was taken by Judge Utz upon the presentation to him of these statements or petitions?

A. Judge Utz declined to grant the prayer of either petition, but being still very much in anger about the matter indicated that we were both of us guilty of contempt, and I think it was upon that day—

By Mr. Miller:

Q. (Interrupting) guilty of a contempt of his court?

A. Of his court. I think it was upon that day that he entered such orders as required us to appear and show cause why we should not be punished for contempt.

By Mr. Fairleigh:

Q. How long were you before Judge Utz that morning?

A. Well we got there about ten o'clock. I think we were back in Louisville at about half past twelve. We were before Judge Utz in the neighborhood of an hour and a half possibly.

Q. Did you go anywhere else about New Albany after you left Judge Utz's chambers?

A. Not unless I may have gone to Mr. Jewett's office.

Q. Did you take luncheon at New Albany that day?

A. No sir, I took lunch at Louisville; I lunched at the Willard Hotel at Louisville with my family.

Q. Did Mr. Sachs return to Louisville with you?

A. Yes sir.

Q. Was there any other or further discussion, as you now remember before Judge Utz that morning with reference to the appointment of a new receiver and the removal of the New Albany Trust Company as receiver? Did you hear anything of this? If so, tell the court what you heard?

A. That was on Thursday morning?

Q. Yes sir.

A. I don't recall that I did. Judge Utz was as I say very much exercised about what had occurred, and said that he didn't propose to give up the property,—words to that effect; and I really was exercised about my own position, and I don't recall that anything was said at that time.

Q. Do you remember whether Mr. Charles Jewett came into that court that morning?

A. Yes, Colonel Jewett came in; if I am not mistaken I think Mr. Harry Jewett preceded him, and then Colonel Jewett appeared. Colonel Jewett took the position that Mr. Harry Jewett as the vice-president of the New Albany Trust Company as receiver had agreed or stated while he was at Indianapolis to his Honor Judge Anderson that he would turn over the property to Mr. Connor as receiver, and that

that was the agreement; that no matter how embarrassing it might be to the trust company, the trust company was going to carry it out. I coincided with Colonel Jewett's views, and said that I had agreed—that was when the matter was being formally presented—that I had agreed to advise the trust company to turn the property over, and that I did so advise it notwithstanding what might happen.

Q. Did Mr. D. A. Sachs go to Mr. Jewett's office with you, do you remember, after you quit Judge Utz's office?

A. I am not certain that we went to Mr. Jewett's office on that morning; I was at his office quite a number of times during the week, but whether that day or not I don't know; I know we got home early, perhaps half past twelve afternoon.

Q. Where were you during the Thursday afternoon after you went to Louisville?

A. After taking my lunch at the hotel I went to my office and all of a sudden a great weakness came over me, my legs went from under me, and I went to my hotel and went to bed. I was in bed Thursday afternoon from about three o'clock until the next day.

Q. During the time or about the time that Col. Jewett was addressing the court on Thursday do you remember whether any inquiry was made of him by anybody as to whether the property had been actually delivered by the New Albany Trust Company to Conner, receiver?

A. Well such an inquiry might have been made. I don't know that it was, or was not.

Q. Do you know whether you had any actual knowledge on that Thursday before you left New Albany or after you left New Albany that the property had been actually turned over to Connor, receiver, by the New Albany Trust Company?

A. Yes sir, I remember Mr. Hester — not Mr. Hester, strike that out please—Mr. Kelso telephoning to Mr. Sauer who was secretary asking whether or not the property had been turned over.

Q. Where was Mr. Kelso when he was telephoning?

A. He was seated in the Judge's chambers there.

Q. What did you do Friday morning? Did you go to New Albany Friday morning?

A. Thursday afternoon I was in bed. Mr. Sachs reported to me that Mr. Kelso had called him up and said that he and Judge Utz wanted to see us.

Q. When?

A. Friday morning.

Q. Well what did you do Friday morning?

A. We went over there Friday morning.

Q. What time did you arrive at New Albany?

A. I should say about ten o'clock.

Q. Where did you go?

A. We went to Judge Utz's office.

Q. Who did you find there?

A. Judge Utz.

Q. Anyone else?

A. Mr. Kelso.

Q. Anyone else?

A. I think not.

Q. What was said when you went in? What was said between you whilst you were there if you now remember? What was done?

A. It is right difficult to keep these things chronologically in your mind. Friday was the day—well we got there about ten o'clock; we went in to see Judge Utz; we were there for a few minutes when, as I remember it, as to myself, I believe it was on that day that I got the first knowledge of being ruled or cited; but at all events after sitting there a few moments—

Q. (Interrupting.) Ruled or cited to appear in what court?

A. Before Judge Utz. After sitting there a few moments I went out for the purpose of doing some further things with respect to the defense in the bankruptcy proceedings in this court. Before I left Indianapolis on the 17th inst. I had ordered from Mr. Butler, the clerk, a full copy of the record.

Q. The 17th of February?

A. The 17th of February—A full copy of the record, and that record hadn't been sent down to me yet; and I was looking out for that and looking out for the—on the question of what defense would be made, when we should plead and various of such matters.

Q. Where did you go to look into that?

A. In that connection I went to the office of Mr. Cardwill the deputy clerk of this court, and to Mr. Jewett's office.

Q. Did you go anywhere else during that day, if you remember, whilst you were in New Albany?

A. Oh yes, I went to a great many places; I went back and forth; I went to Mr. Cardwill's office two or three times trying to get in there, and was in Jewett's office two or three times.

Q. Did you do back to Judge Utz's chambers?

A. I went back to Judge Utz's chambers at three o'clock in the afternoon, as I remember it.

Q. Did you take lunch at New Albany on that day?

A. Yes sir.

Q. With whom?

A. I lunched with Mr. Sachs and with Mr. Kelso.

Q. Had you been in Mr. Kelso's office that morning?

A. I don't think I had been. When we separated it was a question of where lunch would be gotten and it was agreed that lunch should be gotten at Mr. Goodbug's.

Q. Where did you separate, Mr. Watts, from Mr Sachs?

A. It seems to me that we separated in Judge Utz's office.

Q. So that Mr. Sachs and Mr. Kelso came to Mr. Goodbug's where you were taking lunch?

A. Yes sir.

Q. And you lunched together?

A. Yes sir.

Q. Thence where did you go?

A. Thence we went back to the court house.

Q. Altogether?

A. Altogether, except that I didn't go into the court house. I went on, then, to Mr. Cardwill's office. Mr. Cardwill hadn't yet gotten back from lunch, and I went to Mr. Jewett's office, and then subsequently went back to Mr. Cardwill's office again, and then from Cardwill's office I went to the New Albany Trust Company. The New Albany Trust Company and I as attorney for Ryerson & Son had been notified to be present before Judge Utz at three o'clock that afternoon.

Q. For what purpose?

A. On the action of the court with respect to the report—No, on the action of the court with respect to the pleading that we filed concerning the action of the New Albany Trust Company in this matter.

Q. When, if at all, that day did you first learn anything about the New Albany Trust Company being removed or being about to be removed, if you knew it in advance, and another person being appointed in its stead as receiver by Judge Utz? When did you get any information about that at all?

A. Well, definite information of it came from the action of Judge Utz at that time, as I remember, at three o'clock.

Q. Well, what did you do after you returned to Judge Utz's chambers? What did you do or say?

A. Well I did nothing; I took a back seat in the matter; Mr—I think Colonel Jewett was there with the president of his company, and it may have been Mr. Harry Jewett, I don't remember which, one or the other was there, and Judge Utz very probably announced that he was going to remove the New Albany Trust Company, and directed Mr. Kelso to make up the papers, make up the orders. The question of what his bond should be was raised; Mr. Kelso took the position that the bond ought to be small; Judge Utz took the position that the bond ought to be $30,000.

and at that meeting there was present, as I remember it, Mr. Kelso, one of the clerks, Mr. Joe Sachs, Mr. Dave Sachs and myself. I don't know whether the Jewetts were there at the time of the arrangement about the bond. Or, I know now, it was Mr. Harry Jewett; Mr. Harry Jewett went with me from the trust company at three o'clock in the afternoon to go to Judge Utz, and as I recollect it he didn't stay very long. The bond was arranged for, and Judge Utz instructed Mr. Kelso to prepare the necessary and proper orders

Q. Were the orders prepared there as you remember? How long did you stay?

A. Oh I don't know anything about where the orders were prepared or anything about that. I know Judge Utz had his mind made up as to what he was going to do and did it very promptly. We were not there over fifteen or twenty minutes I should say.

Q. What participation, if any did you have in the action respecting the removal of the trust company and the appointment of another receiver?

A. I had none.

Q. Nothing whatever?

A. None whatever; on the contrary, I was at all times adhering to the proposition of trying to efface the terrible charge of discourtesy that had been made against me and trying to get the property turned over to Mr. Connor, receiver.

Q. Did you do anything there or advise anything there against that original intention of turning over that property?

A. No; on the contrary I always said it should be done.

Q. Did you do anything there or advise anything there, or abet the doing of anything looking to the retaking of that property by Kelso, receiver.

A. No sir I did not.

Q. Who left with you when you left Judge Utz's chambers that afternoon, that Friday afternoon?

A. Mr. Joe Sachs, Mr. D. A. Sachs' brother—

Q. (Interrupting) What was the occasion of leaving?

A. (Continuing previous answer) Was there to see about what was known as the Walters contract; he and Mr. Hester represented Walters and Walters was to get certain boilers installed and so forth, and at the so-called creditors' meeting an order had been entered directing the receiver what to do about that; and Mr. Joe Sachs was very much disturbed about whether he was going to get his boilers, now that the question of the clash of jurisdiction had arisen; and he was there to see Judge Utz about it; and he extended an invitation to Judge Utz to go the cafe; extended that invitation to me and I accepted it.

Q. Was it extended to anybody else?

A. It was extended to everybody. Yes sir.

Q. Who accepted it?

A. Judge Utz and I only.

Q. Well did you and Judge Utz and Mr. Joe Sachs go out together to the cafe?

A. I think we did. I am very sure we did.

Q. Whom did you leave in the room, if anybody?

A. My recollection is we left Mr. David Sachs in the room, possibly Mr. Kelso; but Judge Utz had instructed Mr. Kelso to go and prepare the papers in the meantime.

Q. That is to say from the judge's chambers you left?

A. Yes sir.

Q. Do you know whether Mr. Kelso had gone out ahead of you, or did you leave him there, or did he go out with you?

A. It seems to me now that Mr. Kelso went with us, and got a cigar, and then left us and went on to his office.

Q. Is that a positive recollection?

A. Well I can't say that it is positive, no: I think that is the fact.

Q. Where was Mr. David Sachs?

A. Mr. Sachs wasn't feeling very well, and we left him at the office.

Q. You left him in the office of Judge Utz.

A. Judge Utz's office. Yes sir.

Q. Did Mr. Sachs make any excuse for not going with you to the cafe?

A. Mr. Sachs declined the invitation to take a drink. That was rather a novel proposition.

Q. What reason did he give for it, if any?

A. He wasn't feeling very well.

Q. Well you did go to the cafe?

A. Yes sir.

Q. You, Judge Utz and Mr. Joe Sachs?

A. And Mr. Joe Sachs. Yes sir.

Q. How far away from the court room was that?

A. That was a half block one way and a half block another; a block in all.

Q. About what time in the afternoon was this, Mr. Watts? Give your best recollection about that?

A. It was about half past three, thereabout.

Q. How long did you stay at the cafe?

A. All afternoon.

Q. Did any of these three, Judge Utz or Mr. Joe Sachs leave during this time, during this time you all stayed there, or during the time you stayed there?

A. Judge Utz left after we had been in there some considerable time.

Q. Who remained with you?

A. Mr. Joe Sachs and I.

Q. What time did you arise from that sitting?

A. We arose from that sitting at about half past five or a quarter to six.

Q. Where did you go?

A. We went outside and started up the street toward what I believe is Spring street; we fell in with Mr. Zier, Michael Zier.

Q. Where did you see him?

A. Right there in that neighborhood; right, I think, at the trust company, or next to the trust company building.

Q. Was it just a casual meeting?

A. Just a casual meeting; Mr. Sachs was talking about his boilers.

Q. Which Mr. Sachs?

A. Mr. Joe Sachs.

Q. Talking to Mr. Zier about it?

A. Talking to Mr. Zier about whether or not he was going to get his boilers, and how he was going to get them, and what his people were going to do in the meantime if they didn't get them; and whether or not some arrangement couldn't be made if this conflict was going to keep up whether some other arrangement could be made for completing the boilers.

Q. What was your purpose? Where did you intend to go when you left the cafe? Where were you going?

A. Well we were going to Spring Street for the purpose of catching a car Mr. Joe Sachs wanted to find his brother Dave, and he went to the court house to find him.

Q. Well did he find him?

A. No, Mr. Joe Sachs after leaving me at the corner, talking with Mr. Zier, went to the court house and came running down; he had been sick; he was sick that afternoon and the next thing I saw of him was that he was running to catch a car that was at that moment and ready to start.

Q. Did he pass you and Mr. Zier?

A. He passed us.

Q. What did he say?

Q. He sang out that he had been able to see Dave and he was going home; that was at six o'clock; it was what was known as the six o'clock car.

Q. When thereafter did you see Mr. David Sachs?

A. Immediately thereafter Mr. David Sachs came along.

Q. Was he alone?

A. I think he was; he was alone; Mr. Kelso immediately followed and I was still talking to Zier; I wanted to know of Zier what Zier was going to do with respect to the

bankruptcy proceedings, and I was talking to him on those lines, and upon Mr. Sachs and Mr. Kelso coming up I left Zier and went with them.

Q. Well the car had passed; the six o clock car had passed.

A. Yes sir.

Q. How long was it then before another car would come?

A. Well it wasn't very long.

Q. How many minutes, if you know?

A. Oh I should say not exceeding five.

Q. Well you and Mr. David Sachs and Mr. Kelso then walked along together?

A. Oh we went across the street and Mr. Sachs and I caught the car.

Q. How far did you walk with Mr. Kelso?

A. We didn't walk with him at all, except across the street?

Q. What did Mr. Kelso say to you after he came up about these business transactions, if anything?

A. I don't think Mr. Kelso said anything at all.

Q. What did you say, if anything?

H. I don't think I said anything. We were not together but the time for crossing the street.

Q. What did Mr. David A. Sachs say, if anything?

A. I don't remember what Mr. Sachs said except that he and I, whenever we got an opportunity, discussed the question of my contempt before Judge Utz, the charge of contempt before Judge Utz, and as to just what happened there or what was discussed, my mind was very much clouded; I don't know what was discussed.

Q. Did Mr. Kelso say to you where he was going?

A. Not that I recall.

Q. Did you know where he was going?

A. I did not.

Q. Thereupon you and Mr. David A. Sachs took the car to Louisville?

A. Yes sir.

Q. That was Friday evening, the 20th?

A. That was Friday evening, the 20th of February.

Q. Well, now, going back to that Friday sitting before Judge Utz, did Mr. Kelso or anybody else, say anything to you or to Mr. David Sachs in your presence about you or him paying the costs?

A. No sir.

Q. Of any proceeding whatever?

A. No sir; none at all.

Q. Was that ever mentioned at any time until in the meeting in Louisville on Monday or Tuesday?

A. Not at all; and if I may make an explanation, it could not have been mentioned so far as I was concerned, for

this reason: I not only had stated to Judge Anderson that I would advise the turning over of the property to Mr. Connor, not only had I filed a report and petition showing substantially the facts to Judge Utz, I had stated to him orally, but Mr. Jackson who was here on the day of the 16th and 17th of February—

Q. (Interrupting) Here in Indianapolis, you mean.

A. Yes sir; as the representative of my client, Ryerson & Son, whose claim was $15,000 and the only one of material moment that I was representing, had said to me "It must be a receiver anyway; go in there and make that assent.

By the Court:

Q. Go in and make what?

A. Go in before you and do what I did do in the afternoon of the 17th inst.

By Mr. Fairleigh:

Q. So that was with the approval of your client?

A. Oh yes, yes sir.

Q. What time did you get to Louisville on Friday evening the 20th of February?

A. It takes about 45 minutes to go over; we got there at about a quarter of seven or seven o'clock.

Q. What did you do that night? Did you go anywhere that night?

A. Friday night?

Q. Yes.

A. I went to bed.

Q. Was Mr. David A. Sachs with you that night after you got to Louisville?

A. Oh no, no sir.

Q. Now on Saturday as I understand you you had been ruled by Judge Utz to appear before him at three o'clock P. M.; did you make any appearance before him on Saturday?

A. We asked Judge Utz to extend the time.

Q. Did you make any appearance before him on that day?

A. Oh yes, we were there before him.

Q. At what time did you arrive in New Albany?

A. I am not certain about that but I think it was just before lunch time.

Q. Did you take lunch in New Albany?

A. Yes sir.

Q. With whom?

A. Mr. Sachs and I lunched together.

Q. Mr. David A. Sachs?

A. Yes sir.

Q. Anybody else?

A. No sir.

Q. Where did you go from the lunch room?

A. I think we went from the train to the lunch roon.

Q. Where did you go from the lunch room?

A. My impression is that we went to the court house.

Q. Directly?

A. Yes sir?

Q. Was Judge Utz there?

A. Yes sir.

Q. Anybody else?

A. Mr Kelso may have been there. I don't know whether he was or not.

Q. What proceedings were taken before Judge Utz then?

A. The only proceeding was that Judge Utz very kindly said that the rule as to the New Albany Trust Company had been respited until Wednesday, and mine might go too.

Q. So the rule was respited until Wednesday following?

A. Yes sir.

Q. How long were you before Judge Utz then?

A. Well we were not very long before him until there was another adjournment to the cafe.

Q. Who went with you?

A. Judge Utz, Mr. Kelso, I think Mr. Sachs; and later in the afternoon—

Q. (Interrupting) David A. Sachs?

A. Yes sir; and later in the afternoon Colonel Jewett came in?

Q. Now this was Saturday afternoon?

A. Yes sir.

Q. How long did you stay there?

A. Well we stayed there till dark?

Q. Did you all remain there until dark, all those you have named?

A. Well no, Colonel Jewett was only there for a little while. I think he came in and he and Judge Utz went out together.

Q. Mr. Kelso, when did he leave?

A. I don't remember how long Mr. Kelso stayed, but he stayed for awhile. He was smoking only. He wasn't drinking anything.

Q. Were you and Mr. David A. Sachs after awhile left alone in the cafe?

A. Yes sir; yes sir, and we finally went home together.

Q. From the cafe?

A. Yes sir.

Q. Are you certain, Mr. Watts that you were in the cafe twice, spent two afternoons in the cafe at New Albany?

A. I am positive about it, sir.

Q. Well what time did you get to Louisville that evening, Saturday evening?

A. Some time between five and six o'clock I would say. A good many of these matters that didn't impress themselves upon my mind in any way, but I should say between five and six o'clock sometime.

Q. On that day, Saturday, to-wit, what was said between you and Mr. Kelso or Judge Utz in regard to this receivership, if you remember? Was there any talk about it specially.

A. I don't remember that there was any particular talk at that time. There were quite a number of times when on that day I suppose, and at different other days, different times, when Judge Utz and Mr. Kelso were anxious to know from me what had taken place at Indianapolis, what were the facts, what I had agreed to do, what was the order that was entered, if any, and everything relating to these matters. There were quite a number of hypothetical questions stated, propositions stated, wherein I was asked to state what I thought about that with respect to the bankruptcy law and I gave them my idea; whether there was anything said on Saturday or not, except in a general way, I should say no. I might say this further; as I recollect it I spent a good deal of the time on Saturday in discussing with both Colonel Jewett and Harry Jewett finally the question of what should be done for Zier & Company and Ryerson & Son, Zier & Company being a defendant and Ryerson & Son as a creditor proposing to come in and become a defendant, what should be done for them in the original bankruptcy proceedings, and what pleadings should be filed, and how they should be prepared, and who should prepare them; further there was divers questions that were discussed which required my presence over there as I saw it; one for instance was when was the time to answer.

Q. Answer where?

A. In that bankruptcy proceeding; the question in my mind as to whether the clerk had exceeded his power in fixing the return day and whether we had a right to rely on that or whether we should answer, and how we should plead, whether by plea, answer or demurrer; all these questions were discussed by Colonel Jewett and Mr. Harry Jewett and myself during these several days.

By the Court:

Q. You never filed any kind of a plea, did you?

A. No sir I did not; I intended to do it at that time.

By Mr. Fairleigh:

Q. Well why didn't you file it?

A. I only knew from what my brother reported to me, to-wit, that Ryerson & Son instructed us not to defend since all of this occurred.

By the Court:

Q. Well Ryerson & Son had already told you here in Indianapolis to consent to the turning over of the property to this court and its administration here, and you so testified, didn't you?

A. Your Honor—

Q. (Interrupting) You so testified, didn't you?

A. Only as to the turning over of the property.

Q. Ryerson, I understood you to stay, that Ryerson's agent here at Indianapolis told you to consent to the turning of the property over to this court?

A. Yes sir, but at the same time instructed me to prepare a defense to the bankruptcy proceedings; the original instruction was only for the purpose of consenting to the turning over of the property, but they also instructed me to proceed to the defense of the bankruptcy proceeding.

Q. One of the causes of bankruptcy alleged was the preference made to Ryerson & Son?

A. Yes, but whether that was a preference was a matter of opinion.

Q. I say that was one of the causes alleged, was it not?

A. Yes that is true.

By Mr. Fairleigh:

Q. When did you, if at all, again receive any communication from the parties at New Albany after you returned to Louisville on Saturday night?

A. Somebody telephoned me that night at about half past ten or eleven o'clock; I suppose it was from New Albany.

Q. Where were you?

A. I was in my room at the hotel asleep; I was waked up; the telephone in my room rang, and I answered it; Some body said that we had been all of us cited to appear in this court for contempt.

Q. What did they desire you to do, the person who advised you over the phone?

A. It was a question whether I should come over there then or come over in the morning; I finally said there was no occasion for me to come over except on Sunday, and I finally went over on Sunday.

Q. Do you know who telephoned you?

A. No, I couldn't say.

Q. So you did go over on Sunday morning?

A. Yes sir.

Q. That was the 21st day of February or the 22d day of February?

A. That was the next day in order.

Mr. Miller: The 22d.

Q. Where did you go that morning, Sunday the 22d of February?

A. Sunday was the 22d. Either Mr. Sachs called me up or I called him up, and we agreed to go over and we went over to New Albany along about ten or half past ten, and we went to Judge Utz's—to the court house; it was quite cold, and just as we got to the door Judge Utz and Mr. Kelso came out of the court house; Mr. Kelso said that there was no fire there and he would make a fire in his office if we would go with him and invited us over, and we went.

Q. Did they have a copy of the rule which had been issued by the United States district court?

A. Yes sir, that was the main purpose of our going over there to see in what manner we were involved in the citation.

Q. You say the main purpose, was there any other purpose?

A. No, no other purpose; that was the purpose of going.

Q. Well what did you do there that day at Mr. Kelso's office?

A. We generally discussed the question of responses; Mr. Kelso said he wasn't familiar with the practice in the court, and asked divers questions as to how the response ought to be made and matters of that character; I think there was nothing else discussed than the general proposition of how the responses ought to be made; What response ought to be made.

Q. What time did the meeting adjourn?

A. The meeting adjourned a little before twelve o'clock.

Q. Where did you and Mr. Sachs go?

A. We went home.

Q. Arriving at Louisville about what time?

A. About, my recollection is about one o'clock. Yes I know it was about one o'clock. I took dinner at the hotel on that day.

Q. Did you after that have any meeting with Judge Utz or Mr. Kelso or either of them? I don't mean on that day, but at any time?

A. On the following day, Monday.

Q. How was that meeting brought about?

A. We received two telephone messages from Mr. Sachs asking us to come over to his office.

Q. Who received them?

A. I received the message. My brother and I were then discussing the question of these rules, the rules from this court.

Q. What time of day was that on Monday as near as you can remember?

A. What do you mean?

Q. What time of day was it when Mr. Sachs telephoned you or your brother to come over to his office?

A. He telephoned about nine o'clock, I believe, or half past nine; I said I couldn't come; then; he then telephoned about eleven o'clock, or half past and said that Mr. Kelso had come and brought with him a copy of the order.

Q. On Sunday was there any arrangement made between you and Mr. Sachs and Mr. Kelso and Judge Utz for a meeting on Monday?

A. Yes, Mr. Kelso wanted to come over, and the arrangement was that he should come over on Monday.

Q. And accordingly he did come over?

A. And accordingly he did come over.

Q. What time did you get to Sachs' office, if you remember?

A. I got to Mr. Sachs' office with my brother John at somewhere between eleven and eleven-twenty.

Q. Who was in Mr. Sachs' office when you got there?

A. Mr. Kelso was there, Mr. Maurice Sachs, Mr. David Sachs, my brother John and myself.

Q. Well tell the court what was done and said there at that meeting?

A. The first thing that was done was that Mr. Sachs had a paper which he said purported to be an order of this court, made on the 17th day of February—

Q. (Interrupting) Was that the first time you had—

A. (Interrupting) He asked me if I knew anything of that order. I told him that I did not. Asked me what my idea was about the order, as I had been asked a half a dozen times before by Judge Utz and Mr. Kelso, and I told him just as I had said before that I had no idea that any order was going to be entered. That order purported—I don't remember all the terms,—But purported to show that Mr. Jewett and I had appeared here voluntarily in this court—well the order will speak for itself.

Q. Yes, the order speaks for itself. That is the order of the United States district court in the bankruptcy proceeding entered on the 17th day of February that you refer to?

A. Yes sir.

Q. That order was there or a copy?

A. What purported to be a copy.

Q. It was a copy I suppose?

A. I suppose it was. I don't doubt that.

Q. Well?

A. Well I told him I didn't know of any such order, and Mr. Sachs took the position with Mr. Kelso that that order

effectively settled this question so far as the taking of the property was concerned.

Q. Was there anything else talked about except the response that was to be made by Mr. Kelso to this rule in the District Court?

A. There was some talk about the response, and how the response ought to be made; and either Mr. Sachs said that Mr. Kelso ought to get him a lawyer, or Mr. Kelso said he was going to get one; and about that time my brother John, in the presence of Mr. David Sachs, Mr. Maurice Sachs, Mr. Kelso and myself said to Mr. Kelso, in effect these words: I will quote them as nearly as I can: "Mr. Kelso, did my brother, W. W. say anything or do anything or in any way indicate that he would have this property kept in the State court, and away from the Federal Court at any time since his appearance at Indianapolis?" Mr. Kelso said: "He did not." The same question was put to Mr. Sachs, Mr. David A. Sachs.

Q. With reference to David A. Sachs, to him?

A. No no, as to me. The same question was put to Mr. David A. Sachs, and Mr. Sachs said "No," just as Mr. Kelso had done. My brother then said, "Gentlemen, I will then ask you for your affidavits so that those affidavits may be filed with my brother, W. W.'s response." Mr. Kelso and Mr. Sachs both agreed to make their affidavits to that effect. Thereupon my brother said: "Then I think, gentlemen, it is time for my brother, W. W. to withdraw from this conference." Thereupon the question was submitted to Mr. Maurice Sachs as to whether there was any impropriety in my being there at that conference, and Mr. Maurice Sachs said no, we are only considering the responses, and inasmuch as it was a matter of very grave importance we stayed.

Q. Was there anything said by anybody at that time about the payment of costs and expenses?

A. That was in the morning. No, there was not.

Q. Well what was said in the morning; or at any time?

A. About that? I said what I have just related to the court in the morning; now nothing was said at that time about costs or expenses.

Q. Well how long did this meeting continue?

A. While we were there some one came in from the front part of Mr. Sachs' office saying that Judge Utz had telephoned that he wanted to come over; the question was should Judge Utz come over, and some one present said: "Yes, tell him to come over," and Mr. Dave Sachs went to the telephone himself and came back and reported that Judge Utz would be there at two o'clock I think it was; whereupon I told Mr. Kelso and Mr. Sachs and the others

there that I had an engagement with Colonel Jewett,—or rather I had an engagement with reference to Colonel Jewett appearing here for me, and that that engagement was to be kept by me at half past one o'clock. At half past one o'clock Mr. Harry Jewett came to my office as the representative of his brother Charle, and said to me that under all the circumstances of the case he thought it would be wiser for me to get other counsel.

Q. I suppose that is immaterial;but did you go back in the afternoon to Mr. Sachs' office?

A. In the afternoon I again went back; we were called at about three o'clock, I should say, by telephone.

Q. When you say "we" who were they?

A. My brother and I.

Q. Your brother John?

A. My brother John, and we both went back to Mr. Sachs' office, and Judge Utz in the meantime had come in.

Q. He was there when you got there?

A. He was there when we got there, as was also Mr. Kelso, and Mr. David Sachs, Mr. Maurice Sachs, and Mr. Joe Sachs. One of the first things that was said when I went in was by Mr. David Sachs to the effect, or his words were as nearly as I can remember them, "Mr. Watts, Mr. Kelso thinks you ought to raise the money for the defenses of these rules, or these proceedings." Well I was amazed at any such proposition as that, and I said so, and I asked how I could be expected, upon what basis I could be expected to raise any money; they didn't bring me any business, and I didn't agree to raise any money nor was any money raised by me.

Q. Did you make any agreement to?

A. Not at all.

Q. Was it ever suggested to you before that?

A. No sir.

Q. Had it ever come to you in any other form than that?

A. No sir, not at all. Now it was thereupon that my brother then said to Judge Utz, "Now Judge Utz, I ask you whether my brother had in any way taken part in these proceedings, or bound himself in any way whereby it might be inferred that he was going to endeavor to keep that property from the Federal Court into the State Court; I will ask you now Judge Utz whether any such thing occurred?" Judge Utz said, No, that nothing of the kind had happened; that on the contrary I had always taken the position that I agreed to advise the turning over the property, and in his presence had done so.

Q. Well what else was done at that conference that afternoon? Done or said? Did you talk about anything else than the making of these responses?

A. I think that was the burden of the whole talk.

Q. What time did it adjourn—the meeting break up?

A. I think Mr. Kelso and Judge Utz left about half past four, and left shortly thereafter.

Q. Did Mr. Kelso do anything about employing counsel that evening by telephone or telegraph.?

A. Yes; at least he said so; the question was—Oh yes; Kelso did say that it was going to take three or four thousand dollars to make the defenses in these matters here, and Judge Utz assured him that it wouldn't take any such moneys, but that he had certain moneys in his hands, in the hands of his court which could be used for the expenses of himself as receiver; and Mr. Kelso then said he was going to get himself a lawyer at Indianapolis. Judge Utz wanted to know who; my recollection is that ye said Ferd Winter. They discussed the question of whether or not he was a Republican or Democrat. It was said by Mr. Kelso that Ferd Winter was interested in the Water Works controversy as the repsesentative of Noble Butler, and that he proposed to get Mr. Ferd Winter. Thereupon he left us with a view of going to the telephone, as he had to call up Indianapolis. He came back in about half an hour, Judge Utz waiting in the office in the meantime, saying that he had been,—I don't know, either that he had been unable to get him, or couldn't get him, I don't know what; but that he couldn't get him, and he would have to go to Indianapolis and get other counsel.

Q. Was that the last meeting you had in which Judge Utz and Mr. Kelso took part?

A. Yes that was the last we saw of them.

Q. I will ask you in that connection whether there was anything said about your appearance here in response to that rule? Any discussion about that?

A. Yes there was a good deal said about that; there was a good deal said about my appearance; I had fully expected to appear and make response, I think it was the 25th wasn't it? the 25th; on whatever day that first day was I fully expected and intended to appear. I think it was in the morning of that Monday conference that I asked Mr. Kelso what he would say about my coming to Indianapolis. I had not been served. I let him understand that my desire was to come.

By Mr. Miller:

Q. You say you have not been served?

A. I had not been served. I let him understand that my desire was to come. I thought I had nothing to fear. He said "I wouldn't go"; was very positive about it. Then in the afternoon when Judge Utz came I said to Judge Utz

"Judge, Mr. Kelso thinks I ought not to go to Indianapolis voluntarily; what do you say about my going?" Judge said "I believe I would not go voluntarily." Mr. Kelso spoke up, then, and said this: "In my conversation with Mr. Hester, Mr. Hester told me that Watts was the man that Judge Anderson was after". Well that gave me a very considerable shock, and I said to Judge Utz, I said: "That makes me question whether I ought to voluntarily go or what I ought to do". Judge Utz said: Mr. Watts you ought not to go; I don't think you ought to go". Well I said "I don't know whether I will go or not", and my brother, who was to a very large extent acting for me, said—I believe it was the general concensus of opinion that perhaps I ought not to go, but my brother said: "No, I won't assent to that; I don't think he has got anything to fear, and my idea is that he ought to go". We left that evening with the question of my coming to Indianapolis undetermined and undecided. That night I went home with my brother to his house. The next morning I couldn't use my legs. I was on the verge of nervous prostration, have been ever since and am now, and it was only by staying in bed almost the entire time that I have been able to get here to-day and be in the condition that I am in now.

By Mr. Fairleigh:

Q. Were you served with any citation or process?

A. Well there was an order of arrest sent over there and through the kindness of Mr. Hill it was arranged that I might give bail in the sum of $2,000; the marshal came down to the house where I was in bed, and my brother John and my brother Ben executed the bail for me; I signed the papers and that disposed of that matter.

Q. I wish you would state to this court generally whether in any act or deed of yours, any advice that you ever gave, you in any way undertook to prevent the turning over of the property of M. Zier & Company, from the New Albany Trust Company, receiver, to Connor, receiver?

A. I did not.

Q. Did you ever in any way advise aid or abet the appointment of Kelso, receiver.

A. I did not.

Q. Did you ever in any way advise, aid or abet, in any way, remotely, directly or contingently, the retaking of the property after it had been placed in the hands of Connor, receiver?

A. No sir, I did not.

Questions by Mr. Smith, of counsel for Defendant Sachs:

Q. Mr. Watts, Mr. Sachs had no connection with this case whatever until when?

A. Until I asked him to go to New Albany with me.

Q. What day was that?

A. That was Wednesday the 18th of February.

Q. That was after your return from Indianapolis on the 17th? It was the next day?

A. Yes sir.

Q. To your knowledge did Mr. Sachs ever have any other connection with this case in any way except as your representative on the contempt matter before Judge Utz?

A. Not to my knowledge.

Q. You heard the conversation or at least you were with Mr. Sachs at the time on Wednesday afternoon that you went to the office of Mr. Kelso where you said you remained some half hour; was there anything said there by Mr. Sachs in the way of advice in regard to the removal of the Tru Company? or the appointment of Mr. Kelso or any othe receiver in its stead?

A. No the conversation of that afternoon as I remember it was largely made up of what Mr. Kelso himself said and my rehearsal of what had occurred here.

Q. Was there anything there upon that afternoon said by any of you in regard to the acceptance by Mr. Kelso of the trust providing you gentlemen or either of you would indemnify as against costs or damages that might result by reason of his acceptance.

A. No sir.

Q. You introduced Mr. Sachs to Mr. Kelso, on that visit?

A. I did.

Q. Who did the talking there, or at least most of the talk-talking, you or Mr. Sachs?

A. Well I should say that I talked a good deal more than Mr. Sachs did, because we explained to Mr. Kelso what was wanted; that Judge Utz wanted to see him, and he then told him, Judge Utz had already told him to meet him at eight o'clock and then it was that Mr. Kelso wanted to know what had occurred up here and I told him and he in turn told us of some things that had happened in his experience in other courts.

Q. Did you have any other purpose in going to Mr. Kelso's office that afternoon, other than to bear to him that message from Judge Utz?

A. None at all.

Q. Did you ever at any time employ Mr. Sachs either directly or indirectly or promise to employ him in any matters connected with this case whatever?

A. Now which part of the case do you mean?

Q. I mean this proceeding here, that is trying to wrest the property or trying to retain the property in the state court?

A. Oh no, not in any wise ; Mr. Sachs went in the nature of my friend and possibly my lawyer if it became necessary on the question of going before Judge Utz in my explanation of what had transpired at Indianapolis ; if that could be considered an employment, that is the only employment that ever existed between him and me in respect to the M. Zier & Company matters.

Q. Was that a matter of consideration? Of dollars and cents, or in what capacity?

A. Oh, no; pure friendship.

Q. Now you say that upon Thursday morning when you got there you went directly to the court house, and as I understood you Mr. Sachs was with you and you there found Mr. Utz and Kelso?

A. Yes sir.

Q. Did Mr. Sachs on that occasion say anything to Mr. Kelso or did Mr. Kelso make any request of him to the effect that he become the attorney for the receiver?

A. Not that I heard.

Q. That is, be his attorney whenever he should be appointed receiver instead of the Trust Company?

A. No; no such statement as that was made, and it seems to me that at some time, going across back home Mr. Sachs said to me that he was looking for no job on this side of the river,—talking about the State of Indiana; said that he had enough business of his own, and he wasn't in any wise interested.

Q. You did get a hearing, you and your attorney Mr. Sachs, in regard to the contempt matter before Judge Utz, did you?

A. You mean as to my contempt?

Q. Yes.

A. On Saturday.

Q. On Thursday at least his anger—

A. (Interrupting) I am not so sure that on Thursday I knew that the rule for contempt had been issued ; On Thursday morning I was filing my report and petition showing that I had been to Indianapolis and asking for an expunging of the record which I have spoken about.

Q. That was what I was getting at. Now I want you to explain what it was that Mr. Sachs was to represent you in, in that matter? In what respect was he to represent you on that issue?

A. Mr. Sachs was simply there to aid me, as far as he could, to accomplish what I was trying to do, which was to clear my skirts as far as possible of any blame in Jude Utz's eyes.

Q. You say you left there about a little before 12 o'clock? You were not there in the afternoon of Thursday?

A. Thursday afternoon I was sick.

Q. Did Mr. Sachs return with you?

A. Yes sir.

Q. Now at the interview there, Mr. Watts when Col. Jewett was making his talk before Judge Utz, and when Mr. Sachs perhaps had asked him some question in regard to the possession of the property, I believe you say that Mr. Kelso did ascertain by use of the telephone that the property had already been turned over?

A. Yes sir.

Q. To the receiver in bankruptcy?

A. Yes.

Q. Now what did Mr. Sachs if anything say at the time that that announcement was made to the gentlemen there in that party?

A. That was on Thursday morning?

Q. Yes sir.

A. My recollection is that when that occurred Mr. Sachs made the remark that that disposed of the matter.

Q. You were requested, together with Mr. Sachs, to return on Friday afterwards, by phone?

A. Well I only know that Mr. Sachs told me that Mr. Kelso told him that Judge Utz wanted us back there.

Q. You did return there?

A. Yes sir.

Q. Were you with Mr. Sachs all the time that you were there on Friday?

A. Friday?

Q. Yes.

A. Friday?

Q. Yes sir.

A. Oh no; not with Mr. Sachs all that time.

Q. Thursday, I mean; I said Friday; I meant Thursday?

A. I think we were, unless I may have gone to the Clerk's office, or to Jewett's office without him. We were substantially together the whole time, yes.

Q. Did you at any time, Mr. Watts, commencing with Wednesday, and down to the end of the transaction, or these conferences, at any time ever hear Mr. Sachs say anything looking to the retaking of the property from the receiver, or insisting that it could be done, or that it ought to be done, or aiding or abetting or advising the retaking of the property from the bankrupt receiver?

A. I don't recall anything that he said or did with that respect—in that respect—but I do recall—

The Court: Well you have answered the question. There is too much explanation; just answer the questions; it takes too much time to go further. You have answered the question that was put.

Q. During any of that time did you hear him advise against such action?

A. I don't remember that I heard him at any particular time advise against such action, but Judge Utz—

The Court: You are not asked what Judge Utz did. You are taking up too much time with explanations.

Q. Did you hear him at any time advise Judge Utz to desist from any further interference with the property?

A. No, but I heard Judge Utz—

The Court: You are not asked what Judge Utz did; answer the question; it takes to much time and makes too much record.

Q. I will ask you to state what Judge Utz said in regard to any advice Mr. Sachs had given him?

A. Judge Utz said that Mr. Sachs had said to him that if there was to be the appointment of a receiver for the purpose of taking that property, it would mean that he must call out his militia.

The court: That is hearsay, of the very worst kind.

Mr. Hester: I move to strike it out.

The Court: No, let it stand; let us get along.

Q. How long were you there Saturday, Mr. Watts?

A. I think we were there from about noon until probably five o'clock in the evening.

Q. Were you with Mr. Sachs during that entire time?

A. Well I don't recall. No, I wasn't with him during the entire time, no sir.

Q. What time? What part of the time, if any, were you away from him,—separated from him?

A. My recollection is that we got there shortly before noon and it was then, and shortly after noon that I was talking with the Jewetts about the bankruptcy proceedings.

Q. How long were you separated from him during those two times?

A. Not a great length of time. We lunched together.

Q. I believe you said you went from the train to lunch did you, or not, or was that the day?

A. No, I think that must have been an error; we must have gotten over there shortly before noon, and that I saw the Jewetts that morning just before lunch, and just after lunch.

Q. Where did you leave Mr. Sachs at the time you went to see the Jewetts?

A. I declare I don't believe I can say, unless possibly he went to the court house and we met there.

Q. Did you at any time before you came into the court room here have any knowledge of the change of record in this case, that is an addition to the petition of advice and addition to the order that was made on that petition?

A. No, sir.

Q. When was it discovered first as far as you know?

A. Last night.

Q. By the Court: Did you ask him when he first learned of it.

Mr. Smith: Yes sir.

Q. Do you remember any discussion at any of these meetings wherein it was insisted by some that they could take the property under the Indiana Statute and that Mr. Sachs made some statement in regard thereto?

A. I believe that was on Thursday after Mr. Kelso had telephoned and ascertained that the property had been delivered over. We were seated there.—

The Court: Read the question Mr. Reporter.

The question was read.

The Court: If that is true say yes, if not not.

A. Yes sir.

Q. By Mr. Smith: Will you please give the statement and the time and place as near as you can fix it?

A. It was on Thursday morning that we have been talking about after Mr. Kelso had telephoned to Fred Sauer as the secretary of the Trust Co., the receiver, that by Mr. Kelso announced that he thought that property could be taken under an Indiana Statute, whereupon Mr. Sachs said that as far as he knew, he knew only Kentucky statutes and he knew nothing about that sort of thing. He had been asked some hypothetical questions which involved the matter about that time and was asked that question at that time. He said he knew nothing about the Indiana Statutes.

Cross-examined by Mr. LaFollette:

Q. When you first became connected with this proceeding, it was at the request of the agent of Ryerson & Son at your office. Did you know before that that there was probably to be a suit instituted?

A. In what way do you mean?

Q. I mean did you have information before you had the conversation with the agent of Ryerson & Son that there would probably be a suit instituted against Mr. Zier & Co.

A. No sir, not at all. My first knowledge of it was on Mr. Jackson's appearance.

Q. Before you commenced any proceeding you had a conference with Harry Jewett?

A. Yes sir.

Q. At whose suggestion did you do that?

A. Mr. Jackson suggested it, relating to me certain facts which he said had taken place in Chicago.

Q. After you had that information, did Henry Jewett come to your office?

A. Yes sir.

Q. Did you and he have a conference in regard to th situation and the financial condition of M. Zier & Co.?

A. Yes sir.

Q. Did you learn from Mr. Jackson that there had bee recent payments on their claim of $3100?

A. I do not know that I learned it at that moment, b I did close to that time.

Q. Before you filed a petition for a receiver?

A. I think I did.

Q. Did you from any information you received, eith from him or from Henry Jewett, learn that there had bee other payments recently made by the company.

A. I think not.

Q. Did you know then there had been a payment mad to Minnie Zier?

A. I am very sure I did not. And that the informatio here at this trial was my first knowledge of it.

Q. Did you and Henry Jewett talk together before yo filed the petition in the Floyd Circuit Court about the pro ability of there being bankruptcy proceedings?

A. I don't think we did.

Q. You did know that under the condition of the co cern that there might be such proceedings instituted by th creditors?

A. Certainly I did.

Q. You think that was not talked about?

A. I do not believe it was.

Q. Then after you filed the petition, you had arrange before that that Mr. Jewett would appear to the action wit out delay had you?

A. Yes sir, that was arranged. Mr. Jackson said the su had to be brought and Mr. Jewett understood we were goi to bring it and he agreed to appear.

Q. How soon after your conference with Mr. Jewett d you file the petition?

A. I should say our conference was held at 11 o'clock the morning and the petition was filed about 3 o'clock in th afternoon.

Q. Had you had any conference with the Judge of th Floyd Circuit Court before you went over to file the petitio

A. I had not.

Q. On the filing of the petition and the appearance b Mr. Jewett the receiver was appointed without delay.

A. Yes sir.

Q. Following that you advised with the New Alban Trust Co. as its attorney?

A. I did.

Q. It was your advice as such attorney, was it, that the order was made on the 24th of January to enjoin creditors from taking any steps in any way except by intervention in that particular case?

A. It was.

Q. Did you prepare the order that was made as the result of that meeting?

A. I did.

Q. Had you at that time learned that there was likely to be bankrupt proceedings instituted?

A. On the 24th of January?

Q. Yes.

A. No sir.

Q. After there was a petition filed in bankruptcy how soon did you have notice of it?

A. I think I learned of it about the 12th or the 13th of the month. It was filed first on the 6th. I don't think any mention was made of that and then a supplemental pleading was filed on the 11th.

Q. And that you learned of on the 12th or 13th?

A. Yes sir I think so.

Q. Then on the 14th of February you went into the Floyd Circuit Court with a petition setting forth the facts that bankruptcy proceedings had been instituted and that an order had been issued and that a receiver had been appointed?

A. I did.

Q. Had you a copy of the order that had been made in the United States court then?

A. I don't think I had.

Q. You did know at that time that Mr. Connor had been appointed receiver by the District Court?

A. Yes sir.

Q. And Mr. Hester had filed in the Floyd Circuit Court a petition asking an order that the property that was then in the hands of the New Albany Trust Co. be turned over to Mr. Connor as receiver, had he not?

A. Yes sir.

By the Court:

Q. That petition contained a certified copy of the order of this court did it not?

A. I don't remember.

Mr. Miller: Mr. Hester says he has that petition.

Mr. Hester: They asked me about it this morning and I said that I had it in the office. It got mixed with Mr. Wilhoyt's papers and he sent it down to me.

By Mr. LaFollette:

Q. Anyhow that petition was filed in Floyd Circuit Court on Saturday which was the last day of that term?

A. Yes sir.

Q. You on the same day filed your petition which included the request of the Floyd Circuit Court that you be directed to proceed to Indianapolis and present the matter of the jurisdiction of the Court here and get an order if possible to withdraw the order that had been made in regard to Mr. Connor taking the property.

A. To modify it, yes.

Q. Among other things you asked at that time that the Floyd Circuit Court issue a decree and order restraining Mr. Connor, and all other persons, the petitioning creditors in the bankruptcy court and so forth, from interfering with that property of M. Zier & Co.? Did you not?

The Court: And the United States marshal.

Q. Including the United States marshal, Henry C. Pettit?

A. Yes sir.

Q. You had action taken on that petition on that day did you not?

A. Yes sir.

Q. You also, did you not, as attorney for the New Albany Trust Co., receiver, had the court continue until the next term the petition which had been filed by Mr. Connor as receiver of this court?

A. I did not know that I did do that.

Q. Do you know that there was such action taken on that?

A. Yes sir.

Q. Did you as attorney in the case, having the other order made, did you take any active part, any steps, in regard to that order?

A. Let me answer that this way. That I asked Mr. Hester to take a position with respect to whether his appearance by his petition was general or special—general or limited, and he refused to do it saying that the paper showed for itself what appearance it was. I left there shortly after Judge Utz went off the bench and then went on to my office and came to Indianapolis without knowing anything about what order was entered.

Q. You as attorney for the Trust Co., and Mr. Hester as attorney for the receiver Connor as to what kind of an appearance he was making?

A. Yes sir.

Q. In discussing that, did you take any position in regard to what the court should on the petition, as to what order he should make?

A. I don't think I did, because I did not know what Mr. Hester was trying to do.

Q. You knew that he was asking to have the property turned over?

A. Yes sir.

Q. That was what he was trying to do?

A. Oh yes.

By the Court:

Q. What difference did it make whether it was a special of a general appearance?

A. I thought it made this: that it was a question whether or not he was within that jurisdiction and would be bound by the orders of that court generally made in the disposition of the estate, in the settlement of the contracts the receiver had entered into, the payment of various costs, expenses, commissions, fees, and matters of that character before the corpus of the estate was to be turned over, if it was to be turned over, if it was turned over. On appearance for the simply purpose of taking the property I conceived that probably those questions might not be allowed to be tried.

Q. What other purpose was set forth in that petition except to ask Judge Utz to order his receiver to turn the property over to the receiver of this court? Was there anything else in that petition?

A. I read it very hurriedly and I do not know, I cannot say.

Q. Was it from Mr. Watts' petition? securing that order? that you read the language to Mr. Kelso when he was on the stand, Mr. Smith.

Mr. Smith: Yes sir that was the order made on the petition.

The court: Was it the order or the petition?

Mr. Smith: I read the style of the petition and then I read the order.

The court: Have you that there?

Mr. Fairleigh: There are two separate orders. One on Mr. Hester's petition, made in advance of the filing of the petition of the New Albany Trust Company.

The Court: I want that extract that Mr. Smith read to Mr. Kelso, I want to see that from the order itself or the petition, or both, but proceed with the examination.

By Mr. LaFollette:

Q. Did you not at that time desire to have Mr. Hester state to the court that he was making a general appearance in that court?

A. I did, or at least I wanted him to take a position and he was refusing to do it. If he had made a general appearance and so stated so that there could be no question about it, I should not have come to Indianapolis.

Q. By the Court: Was there anything in the petition or in the proceedings there to indicate a special appearance—was there any limitation whatever in it?

A. The petition was peculiarly worded. I wish it were here. Your Honor has called for it several times and I have been anxious to get it and have asked for it.

Mr. Hester: Whom have you asked?

A. The clerk.

Q. Did you ever ask me?

A. My brother asked you for it.

Q. When?

A. Yesterday.

Q. But before that?

By Mr. LaFollette:

Q. You had in mind at the time that if he came into that court and made a request of the court on a general appearance for any order, that he would thereupon be bound by whatever order was made?

A. I did indeed.

Q. Why did you say now that if he had stated that he was making a general appearance you would not have come to Indianapolis?

A. For the reason that I had little time to think about the matter at all. I had already arranged with Judge Anderson to appear here and I had a great deal to do I could not spend time in New Albany when Mr. Hester would not take any position with respect to his appearance and I had to get to work and get to Indianapolis, which I did.

Q. By the Court. You drew the order for Judge Utz on that day, the 14th, did you not?

A. I did.

Mr. Farleigh: Which order?

The Court: The order on his petition.

The question was read to the witness.

A. Yes, sir.

Q. By the court. In that order this is said: "And the said receiver" that is the receiver of that court, "is hereby ordered and directed through its attorney, to proceed to Indianapolis, Indiana, and there by a limited appearance and by protestation against appearance only, by petition upon such appearance only lay before said District Court of the United States for the District of Indiana the facts with regard to the matters herein, said injunction, restraining order, and said estoppels and to suggest to said court the orders of this court and the fact that had it been fullly informed, as is believed by this court, its order with respect to the assets herein would at the most have been a direction to make an application to this court at the proper time and in the proper

way for the delivery of the said assets to such district courts receiver or trustee after proper disposition and settlement of the matters herein. I wish you would state when the proper time and how the proper way would have been for the receiver of this court to apply to that court for such order?

A. I can only give your Honor my opinion.

The Court: That is what I want to know.

A. My opinion as gathered from the various cases in the Supreme Court.—

The Court: I don't care where you gathered it, just tell us your opinion.

A. My opinion is that Mr. Hester for the receiver should have applied by petition in a general appearance asking for that property and proposing to be bound by the orders of that court with respect thereto.

Q. That was your idea?

A. Yes, your Honor please. One moment. As the Supreme Court of the United had decided.—

Q. I didn't ask you what the Supreme Court of the United States had decided. Strike that out. I want to know your opinion as to what was the proper time and way to do that. I am not asking for your authorities.

A. Upon the hearing of that petition, if it had been denied an appeal, would have laid, to the Court of Appeals or the Appellate Court of the State of Indiana and then because it was a bankruptcy matter to the Supreme Court of the United States, that was my opinion.

Q. So your purpose was to prevent the getting of possession of that property by the receiver of this court?

A. No.

Q. Your purpose was to require the receiver of this court to go around through the state Supreme Court through the United States Supreme Court to get his rights.

A. No. May I now explain in answer to those two questions?

Q. You may if you want to.

A. My purpose, as in my opinion I thought it ought to be done, was to have simply a trial of the question of whether the creditors had bound themselves by what had been done in the State court, whether the receiver could take the property now, because of their being bound and if the receiver could take the property then by reason of assent and acquiescence, that the contracts, fees, commissions and all those matters be disposed of by the Floyd Circuit Court.

Q. Then your opinion as a lawyer was if the petitioning creditors in the United States District Court had by some conduct elsewhere estopped themselves from proceeding here, you proposed to try that question in the Floyd Circuit Court, did you?

A. I do not know that I did propose that.

By Mr. LaFollette:

Q. Did you know before you left the court on that day that the petition filed by Mr. Hester to have the property turned over to the receiver of this court had been continued to the next term of the court, which did not convene until the 9th of March?

A. No sir, I don't think I did. I don't think after Mr. Hester and I got through with our arguments over there that I knew anything further about that petition.

Q. As attorney for the receiver of the state court, did you go away without knowing what was being done by the state court?

A. Yes sir, because I was anxious to get up my pleadings to come here to Indianapolis and I had no time for anything else.

Q. You left before the court adjourned Saturday?

A. Yes sir.

Q. The Monday following you came to Indianapolis?

A. I came on Sunday.

Q. The Monday following you were here and also the Tuesday?

A. Yes sir.

Q. Argued the question and reached the conclusion and went back to New Albany on the evening of the 17th.

A. Yes sir.

Q. Or rather to Louisville that evening, you did not go to New Albany?

A. No sir, I went to Louisville.

Q. When did you next go to New Albany?

A. Wednesday afternoon following.

Q. Had you had any notice from Judge Utz or any one at New Albany as to the condition of affairs there before Wednesday afternoon?

A. No sir.

Q. I believe that you stated that you took Mr. D. A. Sachs to New Albany with you on Wednesday afternoon?

A. Yes sir.

Q. What did you have him go over there with you for if you had not heard anything from there and no charge was against you and you had come up here and performed your duties as fully as you could for the New Albany Trust Company and in good faith reached a conclusion and gone back home prepared to present the matter to the Floyd Circuit Court?

A. I don't think I have admitted that I reached any such conclusion.

Q. Did you not say when you left here that you would turn the property over?

A. I did.

Q. Did you do that without reaching a conclusion that you would?

A. No sir, my conclusion was that I would.

Q. If you had reached that conclusion that you would did you not in fact feel that you had presented the matter here as fully and fairly as you could?

A. I do not know that I can answer that question, the way you want it answered.

The Court: He don't want it answered anyway; just tell the truth.

A. The truth about the matter was this: I agreed to turn it over. So far as arguing it fully and freely, Judge Anderson accorded me a good deal of time, but I did not get over all of my authorities before reaching the end of my argument because of the charge of discourtesy and because my client said he would deliver over the property, and I said I would advise its delivery.

By Mr. LaFollette:

Q. There was nothing further for you to do on that proposition if your client had reached the conclusion that it would turn over the property and so notified you, there was nothing further for you to say was there?

A. I thought there was a good deal for me to say to Judge Utz, I thought there was and I did say it.

Q. Was there any reason why you should have a lawyer go over to help you say it?

A. Yes sir, in my opinion there was.

Q. What was it?

A. I simply wanted Mr. Sachs to go over there and as far as he could help square me with Judge Utz about the matter.

The Court: What day was that you went over?

A. Wednesday.

Q. He was there Thursday, Mr. Sachs was?

A. Yes sir.

Q. And Friday?

A. Yes sir.

Q. And Saturday?

A. Yes sir.

Q. How long did you expect it would take him to square it with Judge Utz?

A. I don't know how long, but in the meantime the rule had been issued.

Q. Not until Saturday?

A. Not the rule, but the rule down there against me.

By Mr. LaFollette:

Q. What was there in the situation that induced you to think that you would have trouble with Judge Utz because

the order that had previously been made by the United States District Court was decided after your presentation of the matter, which still remained in force?

A. There was this in the situation: That the order directing the receiver and me as its attorney to come to Indianapolis directed us to come by limited appearance and protestation only, but not for a general appearance and only for a limited appearance. Mr. Jewett as vice president of the receiver, said on the floor of the court room, that he would give up the property. I, as its attorney, and as an officer of Judge Utz's court, I had been sworn in during the term, said I would advise it. There was that in the situation to make me feel very uncomfortable. I felt that I had exceeded the authority that Judge Utz had sent me up here with.

Q. If you were directed by Judge Utz to come up here and present the matter to the court, did you not understand that that carried with it the matter of getting a decision upon the proposition according to the judgment of this court?

A. No; I did not.

Q. Did you expect to come up here and get a particular kind of a decision, or go back and have trouble with Judge Utz about it?

A. No sir I did not.

Q. Didn't you expect the matter that had been presented regularly in the court had been presented by Judge Utz without severe criticism of you?

A. If we had stood—

The Court: Answer the question.

A. I expected no criticism from Judge Utz if I followed his instructions.

Q. There had been no charge made against you that you knew of up to that time?

A. No sir.

Q. When you went over on Wednesday evening, did you immediately go before Judge Utz in company with Mr. Sachs?

A. Yes sir.

Q. Was there any action taken that evening by Judge Utz in answer to your statement?

A. No sir.

Q. Did Mr. Sachs have any duties to perform in your behalf that evening before the Judge?

A. No sir, except to say,—well he spoke to Judge Utz about the situation—

The Court: You have answered the question.

Q. There was nothing done there that evening?

A. No sir.

Q. How did it come that following that you went over to Mr. Kelso's office?

A. Judge Utz wanted a conference of the attorneys in the case, because—

Q. I don't care about the because. He wanted a conference of the attorneys?

A. Yes sir.

Q. What did you go over to Mr. Kelso's office for?

A. To ask Mr. Kelso to meet Judge Utz in the morning at Judge Utz's request.

Q. Is not there a telephone in Judge Utz's room?

A. I believe there is?

Q. Is not there a telephone in Mr. Kelso's room?

A. Yes sir.

Q. If he wanted Mr. Kelso over there next morning, why did he not telephone to him?

A. He evidently had telephoned him when we arrived.

Q. So that it could not be possible that you went over to bear a message to Mr. Kelso that he wanted him in the court room next morning?

A. It was exactly possible.

Q. And he had already been notified by telephone when you got there?

A. He told us when we got there.

Q. How long did you remain at Mr. Kelso's office and what matters were talked of?

A. We remained at Mr. Kelso's office, I should ssy, in the neighborhood of half an hour.

Q. You mean you and Mr. Sachs.

A. Yes sir.

Q. Did you talk to Mr. Kelso about his having any connection with the matter in the event of the Trust Co. resigning.

A. No sir.

Q. Do you know why you went over there to explain to him your business at Indianapolis and the result of the efforts to hold the property.

A. I know why I went over there.

Q. You say you went over there to tell him to come to Judge Utz's office next morning?

A. Yes sir.

Q. That you say is the only purpose of going there?

A. Exactly so.

Q. But after you talked to him about that, you remained something like a half an hour?

A. I think it was about an half an hour in all that we were there.

Q. Then your remaining there and his conversation had nothing to do with his going to the room of Judge Utz next morning?

A. Not at all.

Q. Why was it that the question came up that was discussed with Mr. Kelso about the removing or the resigning of the receiver in the state court?

A. I have not said any such thing was discussed.

Q. What did you talk about over there?

A. Mr. Kelso asked what had transpired? And I told him and he told us what he had done in one or two instances in Federal Courts in which he had appeared.

Q. On the next morning, you say you went back to New Albany, did you not?

A. Yes sir.

Q. For what purpose did D. A. Sachs go back with you next morning?

A. Judge Utz was in such a humor when we left there, and he had requested me to come back and I believe also had requested Mr. Sachs to come back and we went.

Q. Had Mr. Sachs made an appearance for you?

A. No, sir.

Q. If he had made no appearance for you on Wednesday before, and I believe you said awhile ago that he had never had any connection with the case in any way, why was he to go back or be ordered back if he was not connected with the case in any manner and had not entered any appearance for you?

A. I don't think he was ordered back in any sense, nor had he made any appearance for me in the sense of an appearance. He was talking in my behalf with Judge Utz.

Q. Why did he go back on the next morning?

A. He went not only because Judge Utz requested it, but because I requested it.

Q. Was he still going back to appear for you?

A. Yes, sir.

Q. That was his purpose was it?

A. Yes, sir.

Q. Now on the next morning, Thursday, what did he do then.

A. Thursday morning was the morning on which I filed—

The Court: The question is what did he do.

A. We went over there together, I do not remember anything in particular that Mr. Sachs did that morning. He was asked some hypothetical questions were put to him and he was asked his opinion.

Q. What about?

A. This that and the other matter which would involve questions in this case.

Q. Was that asked as a lawyer, simply present without being connected with case?

A. Yes sir.

Q. What did he do on Thursday for you as your attorney?

A. I don't think he did anything for me except that he was with me.

Q. What was done on Thursday, either by you or him?

A. On Thursday I filed a report and petition of the Trust Co., signed by myself—

The Court: You were not asked what it showed.

Q. What action did Judge Utz take upon that petition?

A. He entered an order denying the prayer of that petition and also an order citing me to appear on the following Saturday to appear for contempt of his court.

Q. Had the order been made against the Trust Co. charging that it was in contempt also?

A. The same kind of order was made, I think on the same day when the Trust Company filed its separate pleading through Mr. Jewett.

Q. Was the statement made by Judge Utz that the Trust Co. was in contempt before he said anything about you being in contempt?

A. I don't remember that that was so.

Q. Did it not occur like this? That he said in regard to the report that was filed by the Trust Co. that he thought it was in contempt of his court in taking the steps it had taken and you said to the court if you make that order against the Trust Company you should make the same order against me?

A. I don't think I did.

Q. By the Court: You don't think you did. What is the fact about it?

A. I have answered the fact—I know.

By Mr. LaFollette:

Q. That order was made against you without any suggestion on your part?

A. Yes sir.

Q. You remained in New Albany, did you not?

A. No sir.

Q. What time did you leave there?

A. About twelve o'clock.

Q. Did Mr. Sachs go back with you?

A. Yes sir.

Q. Had there been any conclusion reached at the time you left there on Thursday as to the appointment of another receiver in lieu of the Trust Company?

A. No sir, I don't think there had been on Thursday.

Q. Up to the time you left there on Thursday, Mr. D. Sachs had made no appearance for you before Judge Utz, entry of any kind had been made showing his appearance?

A. No sir.

Q. No action had been taken by him as your attorney any matter before the judge?

A. No sir..

Q. And you went over in his company at noon of th day?

A. Yes sir.

Q. The order to show cause why you should not be pu ished for contempt was set for Saturday afternoon at thr o'clock?

A. Yes sir.

Q. Friday you went back there?

A. Yes sir.

Q. And Mr. Sachs went with you?

A. Yes sir.

Q. Tell the Court what occasion there was for Mr. Sac to go back there when you were not ordered to be there un Saturday afternoon?

A. The occasion was this, as appears from the record, t rule against me was issued on Thursday, and Mr. Sac reported to me that Mr. Kelso telephoned him Thursd afternoon thas Judge Utz wanted us over there Friday mor ing.

Q. Who telephoned you?

A. Mr. Sachs reported to me that Mr. Kelso telephon him that Judge Utz wanted Mr. Sachs and me over there Friday. And when I went over there on Friday I was serv with the rule.

Q. Did you have any business over there on Friday oth than to go over to be served with the rule?

A. I had other business on Friday. I did not go over f the purpose of being served with the rule?

Q. Did you have any other business before Judge U that day in connection with this case?

A. On Friday?

Q. On Friday.

A. Friday was what date?

Q. The 20th.

A. The question is did I have any business on Frida with Judge Utz in this matter?

Q. Yes.

A. I did.

Q. What was it?

A. In the afternoon I appeared before him as did also th New Albany Trust Company through Mr. Jewett, receive

with respect to the petition which had been filed for the removal of the receiver.

Q. Was the receiver removed by order of court that day?

A. Yes sir. And his bond was fixed.

Q. I say the receiver removed?

A. Yes sir.

Q. By the Court: Who presented that petition for removal?

A. Mr. Kelso, I think.

Q. Was that petition, read here today signed by Mr. Sachs?

A. Yes sir.

By Mr. LaFollette:

Q. Did you know that Mr. Sachs had signed the petition and verified it on his own oath to have the receiver removed and another appointed?

A. No sir, I did not.

Q. Had he said nothing to you about that?

A. No sir.

Q. Had you not learned by reason of your visits over to Mr. Kelso's office and the fact that Mr. Sachs was at Mr. Kelso's office, that he was joining with Mr. Kelso in the preparation of papers to be presented to Judge Utz?

A. No sir I had not.

Q. Did you not hear anything said at all up to that time about Mr. Kelso taking the appointment as receiver instead of the Trust Co.?

A. I don't think I heard that until Friday.

Q. You think that neither Wednesday evening or Thursday you had received any knowledge or notice or heard the matter talked of that Mr. Kelso was to be appointed after the discharge of the Trust Co.?

A. I am very positive I did not know anything of it or hear anything of it on Wednesday and I am quite certain that I did not on Thursday.

Q. What time on Friday did you hear it?

A. I should say along about three o'clock in the afternoon?

Q. Did you know then on that afternoon that a petition had been filed before Judge Utz for the removal of the Trust Company and that it had been removed and that Mr. Kelso was appointed and his bond fixed at $30,000, and that he had qualified as such receiver and that the orders had been formulated and a demand upon Mr. Connor for the property, his refusal anticipated and the orders prepared for a request that a writ issue to the sheriff directing him to take the property and turn it over to Mr. Kelso.

A. Some of those things I knew about, not all of them.

Q. Which of them did you know about?

A. By Mr. Miller: I submit that that is too long a questio and that it is not proper to put such a question to the wi ness. I think the question is entirely too long.

The Court: I think it is myself.

Q. I thought I would cover the whole thing by one que tion, but I can cut it up. Did you know of the appoin ment of Mr. Kelso as receiver?

A. Yes sir.

Q. Did you know that his bond was fixed at $30,000?

A. Yes sir.

Q. And that it was given?

A. Yes sir.

Q. Did you hear any talk about him giving that muc bond?

A. I did.

Q. Who was present when that was being talked abou

A. Mr. Kelso, Judge Utz, David Sachs, Joe Sachs, and

Q. Did you know of the order being prepared directin him to make demand for the property on Mr. Connor receive

A. No sir I did not.

Q. Did you know that Mr. D. A. Sachs had signed petition for the appointment of Mr. Kelso as receiver, upo which he was appointed?

A. I don't think, I knew it at that time.

Q. Did you know that Mr. Kelso stated to the judge th he could not be a receiver while he was appearing of reco as attorney for the creditors in this case?

A. No sir, I don't think I knew that.

Q. Did you know that in answer to a statement of th kind Judge Utz directed that he withdraw as counsel for ce tain creditors and that an arrangement was made with M D. A Sachs to appear for the creditors instead of Kelso?

A. No sir.

Q. Did you know that the order was made and attach to the entry of February 14th making it appear that M Kelso withdrew as attorney for certain parties as of th date?

A. I infer you mean as of the times you have been spea ing about?

Q. Yes, sir.

A. No.

Q. You did not know that until you came up here?

A. Only last night.

Q. Yet you say that D. A. Sachs, your very close frie and an attorney living in Louisville came over—

By Mr. Miller: I submit that as argument.

The Court: I think it is too.

Q. There was no notice given you by Mr. Sachs that was appearing—

A. Yes. That refreshes my recollection. I was served with the notice on Friday at noon that the United States Tu—— As counsel for Ryerson & Son, I was served with notice that a petition would be filed at three o'clock that afternoon.

Q. For what purpose?

A. I do not remember whether the notice itself expressed in detail the purpose but it was substantially that there would be a motion to remove the present Receiver and appoint another in its stead.

Q. And that notice that came to you indicated that it was on the petition of the United States Tube Co.?

A. Yes, sir.

Q. Represented by D. A. Sachs?

A. That I do not remember. I do not remember how that note was signed.

Q. On receiving that notice did you examine what kind of proceedings were filed?

A. No sir—I did not. I can explain why I did not.

The Court: You have answered the question.

Q. Did you hear nothing at all said about the matter of the expense of this Receivership on the part of Mr. Kelso at any of those times when you were present in his office?

A. I did not, that is, so far as my own connection was concerned.

Q. Did you hear anything said about his not wanting to incur any liability in it?

A. No sir—I did not.

Q. Did you hear any discussion in the office about the possibilities of his being in contempt of the United States Court if he took that position and sought to retain the property?

A. No sir—I did not.

Q. Did you hear anything said that if there was any punishment inflicted, it would not likely be anything more than a fine?

A. No, sir—I did not.

Q. Were the statements that were made at Louisville, the first you heard about there being a call on you for expenses.

A. Yes, sir.

Q. Had Mr. Sachs said anything to you about the expenses incident to it before that?

A. Oh no, not at all.

Q. I think you said in your original examination that there was some conversation between you and D. A. Sachs on your way from Louisville to New Albany about his employment over there that he was not looking for a job on this side of the river?

A. Yes, sir.

Q. When was that?

A. I could not attempt to fix the specific day but it was some one of those days. We were going home and he said that Mr. Kelso wanted to employ him as attorney and he was not looking for a job over the river and that he had told him they had a bar over there &c.

Q. Did he then say whether or not he had taken the employment?

A. I would not undertake to repeat his exact words?

Q. By the Court. Did he say anything that night that he had taken the employment?

A. No, sir; he said to the contrary.

Q. Did he at any time tell you that he had taken the employment?

A. No, sir; at no tine.

Q. Did you learn at any time that he had appeared and filed papers for Mr. Kelso receiver?

A. Only since that thing occurred.

Q. On the Monday following the notice that reached you about coming here when you had a conversation with Mr. Sachs and Judge Utz was present, did you hear the statement by Mr. Sachs that he would not come up here or rather that he would go somewhere else in preference because he did not want to testify against you?

A. He made no such statement.

Q. In your presence?

A. No, sir.

Q. You did not hear any such statement?

A. I am sure he made no such statement while I was there.

Q. Did Judge Utz come over there at the request of either you or Mr. Sachs or on his own motion?

A. On his own motion if the report was correct and I have no reason to doubt it.

Q. Do you know for what purpose he was there?

A. No, sir—I do not.

Q. What part did he take in the consideration of the question at the conference—what did he say to you and Mr. Sachs about it?

A. He was very much disturbed at what had occurred and was to a large extent asking questions, not participating in the question of what sort of response was to be prepared but discussing the probable settlement of the whole matter by Mr. Kelso coming to Indianapolis and simply surrendering to this court by leave of Judge Utz's court.

Q. By the Court: Who was discussing that?

A. Judge Utz.

Q. By Mr. LaFollette: That is on his coming up here and surrendering the property on his leave?

A. Yes, sir; that was one of the questions discussed in which Judge Utz took part.

Q. What did he say about giving such leave?

A. I do not remember now who suggested it but it was suggested that Mr. Kelso might possibly dispose of the whole matter—the whole contempt proceedings by simply surrendering and surrendering with the leave of the Floyd Circuit Court. It was further suggested that Mr. Hester should be seen with respect to that. Mr. Judge Utz thought that Mr. Stotsenberg might be seen with regard to it but declined to have anything to say to Mr. Hester about it.

Q. By the Court: When and where was this?

A. In Mr. Sachs' office on Monday.

Q. Different methods were talked of of disposing of the matter without a response other than by the act of Kelso?

A. Well, yes. The matter was discussed from every side.

Q. There was something said during your examination about an order made by this court on the 17th which you say you did not know of?

A. Yes, sir.

Q. You did know of the order which was issued prior to that time the enforcement of which you had asked to have delayed?

A. Yes sir.

Q. When you went back down there you told them that order was still in force?

A. Yes sir, my report shows that.

Q. You knew if an act in the way of taking the property from the receiver was committed it would be such a matter of interfering with the orders of this court relating to that order as though the like order was made on the 17th?

A. That is a question of law which I would not like to answer.

By the Court: Do you say you cannot answer it?

A. I respectfully submit that that is a question of law which I ought not to be made to answer.

The Court: I will not require you to answer it.

By Mr. Miller:

Q. You were asked by Mr. La Follete with reference to the commencement of that suit down there by Ryerson & Son. A summons was issued in that suit, was there not, at the time it was commenced?

A. Yes sir.

Q. And placed in the hands of the sheriff?

A. Yes sir.

Q. You were asked a little bit ago by Mr. LaFollette whether you knew of the preparation and filing of any

papers by Mr. Sachs as the attorney for Kelso, receiver? And you stated that you did not know of it at the time, but only knew as you have learned since. I will ask you if you have now any knowledge that Mr. Sachs filed any paper for Mr. Kelso at all?

A. Do you mean in the sense of handling it physically?

Q. Presenting it in court?

A. No sir; I have no knowledge of it.

Q. You simply have been informed that he prepared a paper or rather signed it?

A. That is what I had reference to when I made that answer.

Q. Is your information that he ever did any thing more than to sign it and swear to it?

A. No sir; that is all.

Q. Have you any knowledge at any time of Mr. Sachs acting or Mr. Kelso as receiver other than what you have stated, namely signing and swearing to that paper?

A. No sir.

Q. In all the times that you met Mr. Kelso and Mr. Sachs together, please state to the court if you ever heard Kelso say anything to Sachs as his attorney?

A. No sir.

Q. And in all those times, did you ever hear Mr. Sachs say anything to Mr. Kelso implying that he was his attorney?

A. No sir.

Q. As receiver of course I am asking. When did you first learn of have any intimation that Kelso claimed that Mr. Sachs was ever his attorney as receiver in this matter?

A. I do not believe I could fix that date.

Q. Did you have any such notice or knowledge prior to the commencement of some of these contempt proceedings?

A. I think not.

Q. You say you think not. Is that your best recollection?

A. That is my best recollection.

Q. Did you ever hear that Mr. Kelso ever made such claim until after you know that Mr. Sachs' name had been included in this citation from the Federal Court?

A. My best recollection is I did not.

Q. Did you ever know that any such suggestion had been made by Judge Utz until after the same time?

A. No sir.

By the Court:

Q. Is there any other firm known as W. W. and J. R. Watts in Louisville?

A. No sir.

Q. Did your fact of W. W. Watts and J. R. Watts at any time represent the petitioning creditors against the John A. Etheridge Furniture Co.?

A. Yes sir.

Q. You represented the petitioning creditors?

A. Yes sir.

Q. Judge Barr is the judge of what District court?

A. He was judge of the District court of Kentucky?

Q. Prior to Judge Evans' appointment?

A. Yes sir.

Q. I will ask you if you as one of the members of W. W. and J. R. Watts appeared before Judge Barr while he was on the bench at Louisville, in the matter of the John A. Etheridge Furniture Co.?

A. I did.

Q. The question there was whether or not the court after the filing of an involuntary petition and a prayer for an adjudication could appoint a receiver?

A. Yes sir.

Q. You for the petitioning creditors took the ground that the court in that case should appoint?

A. I did.

Q. And you procured that sort of a decision in your favor?

A. Yes sir.

Q. And the receiver was appointed?

A. Yes sir.

Q. And Judge Barr in that decision rendered in behalf of your client, used this language: "As congress has been empowered by the Federal constitution to pass a bankrupt law, it may be assumed, we think, as true, that the jurisdiction of the bankrupt court is exclusive, and must be for so far as it is necessary to adjudicate that the party is bankrupt and settle and liquidate the estate of the bankrupt thus declared; and that this jurisdiction cannot be concurrent with that of the State courts, but must be exclusive, and that the insolvent laws of the state are suspended after the passage of the bankrupt act. Sub-section 3 of Section 71 provides: "Proceedings commenced under said insolvent law before the passage of this act shall not be affected by it." This would clearly indicate that proceedings commenced after the passage of the bankrupt act cannot be effectual to prevent the administration of the bankrupt estate in bankruptcy. To allow the bankrupt to select the trustee to administer upon his estate instead of the creditors as provided in the bankrupt law, or to allow the State court to take jurisdiction of the estate of the bankrupt and administer and distribute it, would effectually destroy the efficiency

of any bankrupt act that might be enacted by congress and thus effectually destroy the power granted to congress to pass a bankrupt act" You read that opinion, after it was rendered?

A. Yes sir, repeatedly.

Q. You knew that when you appeared in this court by special and limited appearance to be the jurisdiction of this court?

A. Yes sir, but I would—

Q. Answer my question. You knew that when you stood in the chambers of this court and insisted that this court had no power to appoint a receiver and that the receiver of this court had no power to interfere down there, because the state court had taken jurisdiction first? You knew it then?

A. Yes sir.

Q. Now you can make any explanation you wish?

A. I have changed my mind about the law since that decision was rendered?

Q. You are against that decision?

A. Very much so.

Q. You now think that Judge Barr did not decide it right?

A. I think under the particular facts of that case he did.

Q. You think that decision was right?

A. Because Mr. Hyatt came in and prayed that he be made receiver and Judge Barr granted that prayer.

Q. Who was he?

A. The assignee of the state court.

Q. So that if this court had appointed the New Albany Trust Company instead of Mr. Connor, you think it would have been proper?

A. No sir, I do not mean that.

Q. I won't ask you to explain what you mean, but you may explain if you want to.

A. I would like to make this explanation, that since the decision in the Etheridge case there have been decided by the Supreme Court of the United States and by divers Circuit Courts of Appeals, the Burdees case, Bryan v. Burnheimer, the Nugent case, the Comingore case, Pickens v. Dent, In re Seiboldt, and such cases and my mind has undergone a complete change for what it was at the time when that opinion was rendered, which was early in the beginning of the present bankruptcy law.

Q. Tell what single one of those cases overturns the doctrine Judge Barr announced and which I have just read. Name the case. I have heard three days of argument on this matter and I never have heard the case announced and I would like to hear you announce it.

A. I think the principles--

Q. Just name the case.

A. All of the cases I have mentioned taken together.

Q. Name one.

A. The Comingore case for one.

Q. That is your judgment about it?

A. That is my opinion. In addition to which I say that the other cases with the opinion of the Supreme Court in Eyster v. Gaff and the old cases under the old law.

Q. Can you name one single case decided by the Supreme Court of the United States or by any of the Federal courts holding contrary to the doctrine that I read to you from Judge Barr that the bankrupt law is exclusive and suspends the operation of the state insolvency laws? If you can, I shall be pleased to have you name the case.

A. I want to say Judge that I won't undertake to name any single case which says the jurisdiction is not exclusive in bankruptcy matters.

Q. You won't undertake that?

A. No sir. I insist that that is the law.

Q. You will not undertake to furnish any case which holds a contrary doctrine, that when the bankrupt act is passed—at least whenever any proceedings are commenced under it, they suspend all proceedings under the state's insolvency laws. Can you name any case holding the contrary of that doctrine? I want the name of the case.

A. I think the Comingore case, the principles in the Nugent case and the principles in all the cases. I do not believe your Honor understands my idea. If you would let me explain it I would like to do it.

Q. I heard you the other day. You have not changed your ideas since the 15th or 16th of February?

A. Not at all.

Q. Did you call my attention to this case by Judge Barr when you were here presenting this case?

A. I don't think I did.

Q. Now you may explain your view of the law if you wish.

A. My idea of it is that you should contradistinguish between the jurisdiction of the bankrupt, the person, and his debts and his creditors on the one hand and his assets, which may be in the custody of another court on the other hand. I admit and insist and have always insisted that in bankruptcy, take the McKee case, before Judge Gregory in Kentucky,—

Q. Just state your opinion.

A. That the jurisdiction of the bankrupt is here, but it may be a very grave question as to whether the jurisdiction over his property is here.

Q. That is your view of it?

A. Yes sir.

Q. But you say upon your oath that in your opinion the jurisdiction of the bankrupt was in this court, but that the jurisdiction of his estate was not here?

A. Under the present circumstances, that is my opinion.

Q. By Mr. Hester: You said that Mr. Kelso represented to you in a conversation he had had with me on the 22nd, Sunday afternoon, he said that I said that the man Judge Anderson was after was yourself?

A. Yes sir.

Q. Did not Mr. Kelso say to you on that occasion that he inferred from what I said that Judge Anderson was not feeling very kindly on account of what you had done, instead of what you told the court awhile ago?

A. No sir, I don't think he said inferred. He took the positive position that Judge Anderson was after me. That is what alarmed me.

Q. Where were you when he said that?

A. In Mr. Sachs' office.

Q. When was that?

A. On Monday, both morning and afternoon, I think.

Q. In Mr. Sachs' office on Monday morning and afternoon February 23rd?

A. Whatever Monday was.

Q. In addition to what has been said, I would like to make this further explanation; a good deal has been said about the payment of $3000 and odd to Ryerson and Son within a few days of the institution of these bankruptcy proceedings.

A. I wish to say that on consideration of that matter I advised my client that as to a part—either all or nearly all of that $3100, there was no preference and when the proper time came defense on that basis will be made. In my opinion under the circumstances there was no preference.

By the Court:

Q. That is because of the recent amendment to the act?

A. No sir, that did not have anything to do with it, because we discussed that along in December, the 30th, and the amendment to the act was not passed until in February.

Q. Then you discussed whether this was a preference under the bankrupt statute about December 30th?

A. Yes sir.

Q. In other words, the purpose of the institution of that suit in the Floyd Circuit Court was to head off any bankruptcy proceedings?

A. Not at all. The purpose of the institution of that suit was to keep that plant as a going concern, as far as

might be, with a view to paying out as far as possible and possibly having a good settlement.

By Mr. Hester:

Q. If that be the case, why did not M. Zier & Co. under your advice and that of Mr. Jewett make a general assignment for the benefit of creditors instead of a receiver?

A. We did not discuss that.

Q. Could not the assignee under a general assignment for the benefit of creditors operate the plant just the same?

A. I doubt if he could.

Q. Could not the receiver appointed by the bankruptcy court operate the plant just the same as the receiver of the state court?

A. Yes, provided you can always get the judge to give the power to operate and I have had a great deal of trouble in things of that sort.

Q. Is it not supposed to be that the judge will do what is best for the interests of the creditors?

A. Yes sir, but I thought it was very much easier to get a receiver in the state court.

By the Court:

Q. You had no trouble in getting what you wanted from Judge Utz?

A. No trouble at all.

By Mr. Miller:

Q. You understood that the receivership in a bankruptcy case in the Federal Court—that the receiver is a mere temporary custodian of the property?

A. Ordinarily so.

Q. It is supposed to anticipate the appointment of a trustee or assignee?

A. Yes sir.

By the Court:

Q. If I understand you, your view of the law as recently determined, now is that this court had jurisdiction of the bankrupt and of the creditors, but may not have jurisdiction of the property—

A. That is my idea.

Q. Of the assets?

A. Yes sir.

Q. Do you understand that the bankrupt law provides that this court shall have the power, equitable powers to appoint receivers in certain cases?

A. Yes sir.

Q. And is also given power to enforce its orders?

A. Yes sir.

Q. Then even with the distinction you have drawn between the jurisdiction of the person and the estate, what

do you say as to the power of the bankrupt court to enjoin any interference with the property pending the bankrupt proceedings, filing the petition and pending the adjudication; do you deny that this court has this power?

A. That is a question—

Q. I want an answer to the question.

A. I cannot answer the question.

Q. You do not know whether this court has the power or not?

A. No sir.

Q. You do know this court issued such an order?

A. Oh yes, that is to say, I knew that this court issued the order of February 11th, whatever its terms are. I saw that order.

Q. That order was to the receiver down there and other persons to refrain from interfering with the property. You knew that?

A. No sir, I did not know it enjoined anybody but the receiver.

Q. You know that an order of that kind binds not only the receiver, but everybody who has notice of it?

Q. Yes sir.

By Mr. Miller:

Q. You know an order of that kind binds the receiver having the custody of the property under the state court, if the court issuing the order has the jurisdiction and power under the law to make such an order?

A. Yes sir.

Q. That limitation has to go with it?

A. Yes sir.

Q. And you know further if the court has not the jurisdiction and power to make such an order, then it is void?

A. That is my opinion.

By the Court:

Q. You are the witness and you are a lawyer. I would like to have you tell the court whether you are standing for defense on the proposition that the orders are void or whether you have not interfered with them.

Mr. Miller: I submit that a defendant in a criminal prosecution can not be put to answer that question.

By the Court: He is on the witness stand.

By Mr. Miller: But he cannot be put to answer that question. He has a right to put his defense on any ground.

The Court: And the court has a right to investigate whether it is true.

Mr. Miller: But I submit with the utmost deference the court has not the right to ask a defendant in a criminal prosecution where he locates his defense.

The Court: Do you appear for Mr. Watts?
Mr. Miller: Not directly.
The Court: Do you appear for him?
Mr. Miller: No sir, I do not; I try to be reasonably frank—
The Court: I want to know whether you appear for him?
Mr. Miller: I do not.
The Court: Do you object to answering that question?
Mr. Fairleigh: I object for him.
By the Court:
Q. Do you decline to answer the question?
A. Yes sir.
The court hereupon adjourned until nine o'clock.

THURSDAY, MARCH 12, 1903.

MORNING SESSION.

The court met pursuant to adjournment, present the same as on yesterday.

Mr. Miller: The first thing that we want to offer in evidence this morning is the petition that has been spoken of as in Mr. Hester's office; it has come in this morning; the petition filed by Mr. Connor in the circuit court of Floyd county, Indiana, at New Albany on the 14th day of February, 1903, and which is referred to in the entry made on that day.

Mr. Kealing: We have no objection.

Mr. Miller: That is an original paper of the record down there.

The Court: It may be copied in the record and the original returned.

Which paper so introduced in evidence is in the words and figures following, to-wit:

IN THE FLOYD CIRCUIT COURT,

JANUARY TERM, 1903.

Joseph T. Ryerson & Son }
vs. }
M. Zier & Company. }

To THE HONORABLE W. C. UTZ, *Judge of the Floyd Circuit Court:*

Frederick D. Connor, receiver appointed by the United States district court for the district of Indiana, intervening in the above entitled cause respectfully shows to the court:

That on the 11th day of February, 1903, by the consideration of the United States district court for the dis-

trict of Indiana, upon the petition of the Inland Steel Company, John C. Thurston and John Dey, doing business as Dey Time Register Company, he was appointed by said court as receiver, with authority to take charge of all property of said M. Zier & Company and to hold the same in his custody until the further order of said court; That he has duly qualified as such receiver according to the requirements of the order appointing him, by filing his bond therein to the approval of the Hon. Albert B. Anderson, Judge of said court, and is ready to assume control of the property of said M. Zier & Company as soon as the same is turned over to him by the New Albany Trust Company, heretofore appointed as receiver in this cause by this court; a certified copy of the order of the United States district court is filed herewith and attached hereto marked Exhibit "A."

Your petitioner therefore, respectfully prays that said The New Albany Trust Company be directed and required to immediately turn over to this petitioner all of the property, assets, books, moneys, and other effects of said M. Zier & Company now in its possession and control and to immediately file with this court its account in writing, showing the amounts of money collected by it and now on hand. The petitioner further prays that said The New Albany Trust Company be discharged as such receiver herein.

FREDERICK D. CONNOR,
Receiver of M. Zier & Company.

STATE OF INDIANA, }
} *ss.*
County of Floyd. }

Frederick D. Connor, being duly sworn, on his oath says that the matters stated in the foregoing petition are true in substance and in fact as he verily believes.

FREDERICK D. CONNOR.

Subscribed and sworn to before me this 14th day of February, 1903.

CHARLES B. SCOTT, *Clerk F. C. C.*
By William F. Ruoff,
Deputy.

Inland Steel Company, }
vs. } In Bankruptcy.
M. Zier & Company. }

Comes now the Inland Steel Company, petitioner in bankruptcy herein, which having filed its petition to have

M. Zier & Company declared a bankrupt, now files its verified petition alleging that an emergency exists for the immediate appointment by the court of a receiver herein to take charge of the property and effects of said M. Zier & Company pending the hearing of said petition and the appointment of a trustee in bankruptcy herein, which petition reads as follows: (Here insert). And the court being advised after due consideration, finds that the prayer of said petitioner ought to be granted and that a receiver ought to be appointed to take charge of the property and effects of said M. Zier & Company previous to the hearing of said petition and the appointment of a trustee herein.

It is therefore considered and ordered by the court that Frederick D. Connor, be, and he is hereby appointed as receiver herein of the property and effects of said M. Zier & Company, with authority to take charge and possession of all the same and particularly the goods, wares and merchandise, books, papers, and effects of or belonging to said M. Zier & Company located at the city of New Albany, Floyd County, Indiana, and now in the hands of The New Albany Trust Company as receiver of said M. Zier & Company appointed by the Floyd circuit court of Floyd county, Indiana. And said receiver is ordered and directed to take into his possession the sheet iron and boiler manufacturing plant in said city of New Albany, together with all the tools, machinery, appliances, material, and finished product within and about said plant at said city of New Albany, which plant is located at the corner of Pearl and Oak street of said city, and all other property of said M. Zier & Company wheresoever found and situated.

It is further ordered and adjudged by the court that The New Albany Trust Company be and it is hereby required to deliver up to said Frederick D. Connor as receiver of the said property and effects of said M. Zier & Company now in its possession and to refrain hereafter from interfering in any way with the said receiver's possession and control of the same.

It is further ordered that before entering upon the duties of his said trust herein, the said Frederick D. Connor shall execute to the clerk of this court and file with the clerk of this court a bond and sureties to the approval of this court in the sum of Ten Thousand Dollars ($10,000), for the faithful discharge of his duties as such receiver and take the oath required by law of said officers.

February 11, 1903.

ALBERT B. ANDERSON,
Judge.

I, Noble C. Butler, clerk of the United States district court for the district of Indiana, hereby certify that the above and foregoing is a true and correct copy of an order made and entered by the United States district court for the district of Indiana, on the records of said court, at New Albany, Indiana, on the 11th day of February, 1903, of which records I am the proper custodian.

NOBLE C. BUTLER,
Clerk, U. S. District Court
By GEORGE B. CARDWILL,
Deputy Clerk

[SEAL.]

(Endorsements.)
No. . .
Floyd Circuit Court
January Term, 1903.

Jos. T. Ryerson
vs.
M. Zier & Co.

Petition of Frederick D. Connor, receiver.

FILED
in open court,
Feb. 14, 1903.
Charles B. Scott,
Clerk, F. C. C.

Hester & Hester, Attorneys.

Mr. Miller: Now if Your Honor please, we have a number of character witnesses that we wanted to introduce, and we want to do that at this time in order that they may be discharged; they are judges of the courts down there at Louisville.

The Court: Well do you mean you want to introduce witnesses as to the reputation of the defendants?

Mr. Miller: As to their standing, yes sir in Louisville as men of integrity.

The Court: Affecting, of course, their credibility as witnesses.

Mr. Miller: Their credibility as witnesses, and the probability that they would intentionally do anything wrong.

Sterling B. Toney, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Miller.

Q. Judge Toney will you be good enough to state your name in full?

A. Sterling B. Toney.

Q. Where do you live?

A. Louisville, Kentucky.

Q. And have lived there for—

A. (Interrupting) Twenty-seven years.

Q. Have you held any official position there.

A. For seventeen years I have been upon the bench there, the local state bench, as judge of one of the law and equity courts, and I am now one of the chancellors,—the two chancellors.

Q. Are you acquainted with W. W. Watts and David A. Sachs?

A. Very well, sir. Intimately I may say.

Q. Have they habitually practiced in your court and before you?

A. Since I have been upon the bench.

Q. Are you acquainted with their standing in Louisville as to their integrity and fidelity to duty?

A. I am.

Q. And as to their veracity?

A. Yes sir.

Q. Will you be good enough to state to the court the standing and reputation of Mr. Watts in that community with reference to these subject-matters?

A. Judge, Mr. Watts is regarded as one of the men who walks in the high rounds of the profession; he is a gentleman in every sense of the term, socially and at the bar, professionally. I have never known him in the seventeen years that he has practiced before me to be guilty of a discourtesy or to violate his word as a member of the bar; I have never heard it questioned.

Q. Now you may answer the same question as to Mr. Sachs, David A. Sachs.

A. I think Mr. Sachs is his senior, perhaps, at the bar, and my intimacy with Mr. Sachs is both professional and social; and I can say that same of Mr. Sachs that he has never in his whole career before me, and he has a large practice, forfeited that esteem; he is a man that walks a high round of the profession and I am sure there is not a judge in Louisville who would not accept his statement as he would a statement under oath; and I was amazed to hear—

Mr. Kealing: (Interrupting) Well never mind.

Mr. Miller: That is all.

Mr. Kealing: I have no cross-examination.

Emmett Field, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Miller.

Q. Will you be good enough to state your name?

A. Emmett Field.

Q. Where do you live?

A. Louisville.

Q. How long have you lived there?

A. I was born in Louisville and have lived nearly all my life there.

Q. What is your profession?

A. Lawyer; at present on the bench.

Q. How long have you been on the bench?

A. About eighteen years.

Q. Of what court?

A. Well originally the common pleas court, the Jefferson court of common pleas; that was subsequently changed, and now the courts are all consolidated into one circuit court; I am now one of the Judges of the Jefferson circuit court, common pleas division.

Q. Are you acquainted with W. W. Watts and David A. Sachs?

A. Very well with both of them.

Q. Are you acquainted with the standing of those gentlemen in Louisville as men and as lawyers as to their integrity, fair dealing and veracity?

A. Yes sir I have been acquainted with both of them ever since they came to the bar, and probably was acquainted with them as students before they entered the bar, by being practically raised in the same city and largely in the same community; I have known them very well during all of that time, and there has never been a question concerning the veracity or the character or reputation in any other respect concerning these gentlemen that ever I heard of.

Q. Well what is their standing in that regard, those regards?

A. It is of the best.

Q. You are, I think, an instructor in the law school there are you not?

A. Yes, I have been with the law school about twenty years.

Witness excused.

Schackelford Miller, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Miller.

Q. Will you be good enough to state your name?

A. Shackelford Miller.

Q. Where do you live?

A. I live in Louisville.

Q. What is your profession?

A. I am a lawyer and at present I am one of the chancellors of the Jefferson circuit court.

Q. How long have you been upon the bench there?

A. Seven years; two years by appointment and five years of term elected by the people.

Q. Are you acquainted with David A. Sachs and William W. Watts?

A. Yes sir, I know them both very well.

Q. How long have you known them?

A. Well I could hardly say; I have known them nearly all my life, probably twenty-five years, or longer.

Q. Are you acquainted with their reputation in Louisville personally and at the bar as members of the bar, for integrity, fair dealing and veracity?

A. Surely so.

Q. You may state as to both of them, or if you have any distinction to make, as to each of them, what that reputation and standing is?

A. That reputation and standing is of the very highest. I will make this distinction between them; making none except that of time; Mr. Sachs and I both studied law at the same office; I think he was ahead of me in the office of Isaac Caldwell, and in that way I knew Mr. Sachs before I knew Mr. Watts, although I knew them both, my relations with Mr. Sachs were closer by reason of that fact, both studying in the same office.

Q. Would the statement of either of these gentlemen be accepted—

Mr. Kealing: Objected to, don't answer that question.

The Court: Confine your question to general reputation.

Mr. Miller: The standing is of the highest?

A. Yes, I said the standing was of the highest. There would be no distinction between the two gentlemen except as to time.

Witness excused.

Thomas R. Gordon, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questioned By Mr. Miller.

Q. What is your name, please?
A. Thomas R. Gordon.
Q. Where do you live?
A. I live in Louisville.
Q. How long have you lived there?
A. Thirteen years and a few months.
Q. What is your profession?
A. I am a lawyer.
Q. Are you now upon the bench?
A. Yes, sir; recently gone upon the bench.
Q. Had you been practicing at the bar before you went upon the bench?
A. Yes, sir; since March, 1890.
Q. Of what court are you now the judge?
A. I am judge of the Jefferson Circuit Court, Common Pleas Branch, Second Division of the Court.
Q. Are you acquainted with W. W. Watts and David A. Sachs?
A. I have been personally acquainted with both of those gentlemen since I went to the Louisville bar, as I say, since March, 1890. I was acquainted with them as lawyers while I yet practiced in the country; I have known them intimately, personally and professionally since I went to the Louisville bar.
Q. Are you acquainted with the reputation of each of them personally and at the bar as to their integrity, fair dealing and veracity?
A. I am.
Q. Will you be good enough to state to the court what that reputation is as to each of them?
A. I don't think there is any lawyer at our bar, and I weigh my words when I say that, who stands better personally and professionally than the two gentlemen whose names you mention. They belong to that class of lawyers that I am glad to say is not a small class at our bar whose word may be taken unreservedly and whose professional character and whose professional conduct is not only unquestioned, but in my judgment is unquestionable.

Witness excused.

Upton W. Muir, a witness called on behalf of the defendants, being duly sworn, testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY MR. MILLER.

Q. Will you be good enough to state your name to the court?

A. My name is Upton W. Muir.

Q. Where do you live?

A. Louisville, Kentucky.

Q. How long have you lived there?

A. I have lived there all of my life.

Q. You are thirty-five or forty years old?

A. About thirty-nine, sir.

Q. What is your profession?

A. I am a lawyer, and at present judge of one of the divisions of the common pleas branch of the Jefferson circuit court.

Q. How long have you been judge?

A. I was appointed by Governor Beckham last March and served until the first of January, and am now serving under election by the people of last November.

Q. Are you acquainted with David A. Sachs and William W. Watts?

A. I know them personally, intimately and well, and have known them for fifteen years.

Q. Are you acquainted with the reputation of each of them and his standing in Louisville personally and at the bar as to the matter of integrity, fair dealing and veracity?

A. I am well acquainted with them, and in all of those capacities; I have practiced law with them, and since I have been upon the bench I had them before me acting as lawyers in my court, and I know their character for veracity and standing at the bar, and these gentlemen I know well.

Q. Do you know what their associates think of them?

A. I do, yes sir.

Q. Will you be good enough to tell the court what is the standing and reputation of each of them at the bar, and in that community for veracity, fair dealing and integrity?

A. For veracity, fair dealing and integrity, socially and as lawyers, in the character of practice they engage in they stand as high as any lawyer in that community. Their character in all those respects is unimpeachable.

Q. How many judges of the Court of Common Pleas are there—What circuit courts are there in Louisville engaged in civil business?

A. There are five in civil business, one in criminal; all five are here, of the civil courts, who have just testified.

Cross examination, by Mr. Kealing.

Q. You spoke of the character of the practice they are engaged in. Are they confined to a particular line?

A. No, they are general practitioners; they don't handle any criminal practice; all except that. Their practice extends over the common law and equity practice entirely in both courts.

Witness excused.

The Court: Now, gentlemen, in the first place the character and reputation of a witness is presumed to be good until it is attacked. (To the District Attorney:) Do you expect to attack the general reputation of these witnesses?

Mr. Kealing: No sir.

The Court: Now then as to the proposition that they are men of character and standing in their profession, or as to their professional standing and reputation, do you expect to introduce any witnesses on that question?

Mr. Kealing. No sir.

The Court: It isn't worth while then to introduce any more witnesses on that point.

Mr. Miller: We have but one more witness, on that point, your Honor.

The Court: Very well.

George Durrell, a witness called on behalf of the defendants, being duly sworn testified as follows:

Direct Examination.

Questions by Mr. Miller:

Q. State your name to the court?

A. George Durrell.

Q. Where do you live?

A. Louisville.

Q. How long have you lived there?

A. Since I was seven years old, except when I was away at school.

Q. What is your profession?

A. Lawyer.

Q. How long have you practiced law?

A. Nearly thirty years.

Q. You may state what position you occupy now?

A. None at present; I am just off the bench.

Q. How?

A. I am just off the bench.

Q. What position did you hold? What judgeship?

A. I was Judge of the Court of Appeals of Kentucky from the Louisville District.

Q. How long?

A. For seven years.

Q. You were Assistant United States Attorney there?

A. On two different occasions, under Garfield & Arthur and afterwards under Mr. Harrison.

Q. Will you be good enough to state whether you are acquainted with David A. Sachs and William W. Watts?

A. I have known Mr. Sachs nearly thirty years, and Mr. Watts I suppose between twenty and twenty-five years.

Q. Are you acquainted with their reputation in Louisville and their standing at the bar as men and as lawyers for integrity, fair dealing and veracity?

A. I am.

Q. Will you be good enough to state as to each of them what that reputation and standing is?

A. It is excellent.

Witness excused.

David A. Sachs, called in his own behalf and as a witness on behalf of the defendants, being first duly sworn testified as follows:

DIRECT EXANINATION,

BY MR. SMITH:

Q. Mr. Sachs, you will please give us your name?

A. David A. Sachs.

Q. Where do you reside?

A. At Louisville, Kentucky.

Q. And your profession?

A. Lawyer.

Q. How long have you been engaged in the practice of the law?

A. Nearly thirty-one years.

Q. How long have you been residing at Louisville, or engaged in the practice there?

A. I think I came back to Louisville in '73.

Q. Were you practicing elsewhere than Louisville?

A. Yes sir.

Q. Mr. Sachs, were you in any wise connected or interested in the suit of Ryerson & Son against the M. Zier & Company pending in the Floyd Circuit Court of this State?

A. I was not.

Q. Were you in any way interested directly or indirectly either in that proceeding or in the bankrupt proceeding against said corporation pending now in this Court?

A. I was not.

Q. Did you at any time or have you now any connection or professional employment, or any employment whatever in said causes or either of them in behalf of any one?

A. I have not and never had.

Q. Did you attend the Floyd Circuit Court on February 18, 1903; that was Wednesday of that week?

A. I don't think that the Floyd Circuit Court was in session on February the 18th, 1903. I was before the Judge of the Floyd Circuit Court in chambers.

Q. Did you go from Louisville to that court on that day before the Judge?

A. I went from Louisville before the Judge on that day?

Q. Who went with you?

A. Mr. W. W. Watts.

Q. Please state to the court the occasion of that visit of yours?

A. Mr. Watts told me by phone, or communicated with me, I don't distinctly recollect how the communication came, that he wished to have me go with him before Judge Utz as his friend and counsel, and asked me to meet him at the station at Seventh Street in Louisville on the afternoon of the 18th at 3 o'clock, which I did; and in going over Mr. Watts explained to me that he appeared before the Judge of this Court, and that he came here I think with a limited appearance, or with some papers from the Floyd Circuit Court, and engaged in an argument before your Honor in this court; that he had promised this court to advise his client to deliver up some property, and he was fearful that Judge Utz might not take well to it, or agree to it, or acquiesce in what he had done, and I went there as his friend—and to expunge some records I believe is the word that he used from the Floyd Circuit Court that had been on file there: that he was required to do or promised to do by this Court.

By the Court:

Q. Had what?

A. That he had promised this court.

Q. Did he tell you that he had promised this court to do that?

A. Yes sir.

By Mr. Smith:

Q. Mr. Sachs did you go as the attorney, as the employed attorney or in the expectation of receiving any compensation whatever for the services you rendered your friend, Mr. Watts.

A. I did not.

Q. How long had you known Mr. Watts?

A. Twenty years I guess.

Q. Had you known him well?

A. Yes.

Q. For twenty years?

A. Yes sir.

Q. He was a member of the same bar?

A. Yes sir.

Q. What time of day was it that you went to New Albany?

A. Left Louisville at three o'clock, or about that time; of course these little incidents I cannot exactly remember, but it was late in the afternoon, I think in the neighborhood of three o'clock, or half past three.

Q. And how long does it take you to make the trip from Louisville to New Albany, or about how long?

A. About forty-five minutes.

Q. Where did you go when you arrived at New Albany?

A. To Judge Utz's chambers.

Q. Did you go directly from the depot to Judge Utz's chambers?

A. That is my best recollection.

Q. Just you and Mr. Watts.

A. Yes sir.

Q. Who did you find in his chambers at the time you got there?

A. Nobody but Judge Utz.

Q. Well state to the court what took place between you?

A. Well as near as I can recollect we came in there, and Mr. Watts explained substantially what I have just related that had taken place at the court here. Judge Utz became very much enraged—

By the Court:

Q. Very much what?

A. Enraged, and said in so many words that he would not live up to the promise; that Mr. Watts had no right to make such promise; I saw there was very little chance for me to say anything to him, so I perhaps said very little on the subject.

By Mr. Smith:

Q. Were you there in any other capacity except as you have stated, the representative of your friend and brother attorney, Mr. Watts?

A. No sir, at no time.

Q. Where did you go—How long did you remain at Judge Utz's office?

A. Oh not a very long time; perhaps a half hour; it was late when we got over there.

Q. Who left there with you?

A. Mr. Watts.

Q. Where did you then go?

A. As we went out of there, Judge Utz said to us,—I suppose it was directly to both of us, "Notify the attorneys in this case, go by Mr. Kelso's office and notify the attorneys, or words to that effect, to appear here, all of the attorneys in this case, to-morrow morning at nine o'clock." We left there.

Q. Just let me interrupt you a moment. Did he state for what purpose he wanted them there the next morning at nine o'clock?

A. He did not. He didn't state what he wanted them to be there for.

Q. Had he determined or made disposition in any way of any matters on the afternoon of Wednesday that you and Mr. Watts were there?

A. He had not.

Q. Now you may continue your answer.

A. I have an impression that we went by Mr. Jewett's office, and I think Mr. Watts notified him, and from there we started toward the station, or where you take the car; I will say frankly to you I am not familiar with New Albany,—and on the way we stopped at Mr. Kelso's office. Mr. Watts introduced me to Mr. Kelso, and I simply delivered the message that Mr.—Judge Utz had asked me to deliver, to tell all of the lawyers to be there and asked Mr. Kelso to notify the lawyers. Mr. Kelso made the remark that he wasn't on good terms, I believe with Mr. Stotenberg, Stotsenberg something of that kind, Stotsenberg I believe it is; I said "Well, it is with you; that is what the Judge said, to notify all the lawyers to be there in the morning." Then I came home.

Q. How long were you in Mr. Kelso's office Mr. Sachs?

A. Not long enough to sit down; standing up we delivered the message, and walked down; Mr. Kelso walked down and that Stotsenberg incident, I think happened right on the sidewalk.

Q. Going back to the time you were at Judge Utz's office was there anything said at that meeting between you, Judge Utz and Mr. Watts in regard to the resignation of the New Albany Trust Company as receiver, or its removal from that position, or in regard to the appointment of any other receiver in its stead?

A. No.

Q. Anything of the sort mentioned?

A. No.

Q. At the time that you got to Kelso's, arrived at Mr. Kelso's office, was there anything said by him to you about having received a telephone to the effect that you were on your way there?

A. I don't remember it.

Q. You don't remember that?

A. No I do not.

Q. At Mr. Kelso's office on the occasion mentioned, was there anything said about the resignation of the New Albany Trust Company as receiver of M. Zier & Company, or was

there anything said in regard to the appointment of any other receiver in its stead?

A. When was that?

Q. That was at the time that you and Mr. Watts delivered the message there to Mr. Kelso at his office?

A. There was nothing said except that I delivered the message—

The Court: The question is was there anything said on that subject? Answer yes or no.

The Witness: Will you read the question please?

(The question was read by the stenographer.)

A. No.

Q. Was there anything said there at that time about the appointment of Mr. Kelso or his accepting the receivership in the stead of the New Albany Trust Company?

A. No.

Q. Was there anything said about his accepting it provided you or Mr. Watts or both of you would indemnify him, or make him safe in the expenses?

A. Absolutely no.

Q. Where did you go from Mr. Kelso's office?

A. Thursday evening?

Q. No Wednesday; we are on Wednesday yet.

A. I went home.

Q. What time did you get to Louisville, do you remember?

A. No it was dark; I don't remember the time; I suppose in the neighborhood of six o'clock, perhaps a little after or a little before.

Q. Did you and Mr. Watts separate when you got to Louisville?

A. Yes sir.

Q. At what point, do you remember?

The Court: Why take up so much time with that Mr. Smith? They certainly didn't do anything in Louisville on Wednesday night.

Q. Now on Thursday, Mr. Sachs, did you return to New Albany?

A. Yes, under the direction of Judge Utz I went back there with Mr. Watts as his attorney and friend, as I was directed to come back.

Q. What time did you arrive at New Albany the next day?

A. About ten o'clock.

Q. This is on Thursday, the 19th. Now on your arrival there where did you first go?

A. To Judge Utz's chambers.

Q. Did you find any one there; if so, who?

A. Found Mr. Kelso there.

Q. Was the Judge there?

A. Yes sir.

Q. Any one else?

A. No sir.

Q. Mr. Watts went with you?

A. Yes sir.

Q. State what took place there upon your arrival.

A. On Thursday I waited there with Judge Utz and Mr Kelso for sometime for the attorneys that were expected to be there that morning. The message came that Mr. Hester—I believe that is one of the attorneys in the case—and Mr Stotsenberg were out of New Albany and were at Jefferson ville. There was nothing done with reference to the striking out of that record, or the expunging of that record, or with reference to—

The Court: Well, tell what did take place: I don't care to know what did not take place.

A. (Continuing) Well on that Thursday morning Judge Utz seemed to be—Judge Utz was—wouldn't listen to any further argument from me with reference to the expung ing the record, and while I was talking to him he was still insisting upon holding on to the property. About that time Mr. Jewett, the younger Mr. Jewett came in, and he waited there a few moments and he then went out. The older Mr Jewett, I believe they call him Col. Jewett, came in and spoke to the Judge with reference to the delivery of the property and what had taken place up here. He then went out. Mr. Kelso was sitting at the table. I said to him that I expect, Judge, that that property has been turned over, and Mr. Kelso said, "Well, I will find out," and he lifted the 'phone and then he said that the property had been turned over.

By the Court:

Q. To the Receiver of this Court?

A. Yes, well he didn't say that; he said the property had been turned over.

Q. Did you understand that was what was meant?

A. I understood just what he said, that the property had been turned over.

Q. I asked you did you understand at that time that it was turned over to the Receiver of this Court.

A. I didn't know that there was a Receiver of this Court. I wasn't familiar with the record.

Q. Answer the question. Read it to him.

The stenographer read the preceding questions.

A. I am frank to say that I did not know that there was a Receiver appointed.

Q. I didn't ask you whether you knew about it. You answer that question or there will be trouble. If you didn't understand it you can say so, if you did you can say so. Read that question once more.

(The stenographer read the question as follows:) "Did you understand at that time that it was turned over to the Receiver of this Court?"

A. Yes sir.

By Mr. Smith:

Q. That was after Mr. Jewett had gone out that Mr. Kelso gave you this information?

A. Yes.

Q. Now Mr. Sachs prior to the time that Col. Jewett came in, you say that you and Judge Utz had been discussing the matter in regard to this property. What discussion had taken place between you?

A. Well, Judge Utz was insisting on holding on to the property and preventing, or rather not acquiescing in the promise that Mr. Watts had made to this Court to deliver it, and I told Judge Utz that I thought he ought to permit Mr. Watts at least to put upon the record, or put himself in such shape, and deliver the property to the Court. The discussion ended, was broken into when Mr. Jewett came in and that prompted me to say, to ask if the property had been delivered as Col. Jewett went out. I said to Judge Utz, I said, "Judge, that firmly settles it, if the property has been delivered you ought now to release Mr. Watts." He still was persistent and said no he hadn't made up his mind to do that.

Q. Was there anything said upon this day as to the resignation of the Trust Company or the appointment of any receiver in its stead.

A. On Thursday?

Q. Yes.

A. Not that I now remember.

Q. How long did you remain in the office Thursday morning?

A. About an hour or an hour and a half.

Q. Did anything else occur that you remember in regard to this matter?

A. No sir.

Q. Mr. Sachs, on that morning or any time during the day was there anything said to you or in your hearing by either Mr. Kelso or Judge Utz about you or Mr. Watts or both of you agreeing to stand for the cost and expense that the prosecution of this matter might bring about?

A. No sir.

Q. That is, I mean the prosecution of it by any Receiver that might be appointed?

A. No sir.

Q. Where did you go when you left the office, Mr. Sachs on that morning?

A. I went to Louisville.

Q. What time did you go home Thursday?

A. At noon.

Q. At noon; you and Mr. Watts returned together on Thursday?

A. Yes sir.

Q. Were you back in New Albany at any other time, Mr. Sachs, if so, tell when next?

A. Yes I was back there on Friday the next day.

Q. How come you to make a return trip there on Friday?

A. I received a telephone message from Judge Utz to come back there.

Q. When did you receive that message?

A. Thursday afternoon at my office.

Q. What was the purport of the message?

A. The purport of the message was to come back there and bring Mr. Watts back.

Q. Well did you notify Mr. Watts of the fact? Did you go dack with Mr. Watts?

A. Yes, I went back with Mr. Watts the next morning.

Q. What time did you get into New Albany on Friday?

A. Friday?

Q. Yes.

A. About ten o'clock.

Q. Where did you go from the train when you arrived at New Albany?

A. Judge Utz' chambers.

Q. You went directly to Judge Utz' chambers?

A. Yes sir.

Q. Who went with you?

A. Mr. Watts.

Q. Who did you find if anyone there at the time you arrived?

A. Mr. Kelso.

Q. Where was Judge Utz, do you know?

A. He was there.

Q. Then you found Mr. Kelso and Judge Utz?

A. Yes sir.

Q. Were they all that you found in the chambers there at the time?

A. That is all.

Q. Then you didn't go directly from the train to Mr. Kelso's office?

A. No sir; I did not.

Q. At Judge Utz' office what took place after your arrival,—that is, on Friday?

A. Well, I began with Judge Utz about the same subject, that I would like to be heard on expunging that record for Mr. Watts and help carry out his promise. The Judge was in no better humor than he had been with reference to that property; insisted on holding on to it; he said that the Receiver of this Court—that he had been looking into the question and that the Receiver of this Court had made himself a party to his court and that under some Indiana statute he had a right to hold on to that property. I said to him, "I don't know anything about your Indiana Statutes; that property has been delivered.

By the Court:

Q. Delivered to whom?

A. I didn't say in that conversation as to whom it was delivered. I simply said it had been delivered. I will say frankly to you that it had been delivered to some representative of your Court; that was in my mind; "but as the property had been delivered I am of the opinion that you had better never touch that property; if you do, you will find something that you have never seen before; you would just as well get ready with your soldiers, or your State Militia," or words to that effect; and to which he responded, "I haven't got any malitia but I have got a good sheriff and a good posse that will take that property and keep it." And I again expostulated with him and said, "I am of the opinion the best thing for you to do is to let the property alone that has been delivered." He said, "I have made up my mind to remove the Receiver that went into the District Court and promised or agreed"—I don't know the word that he used—"to deliver up that property and appoint another Receiver." Well, I am sure it was Mr. Kelso then that opened up the statute and looked at it and undertook to direct my attention to it. I told him that "I don't care anything about his Indiana Statute; I couldn't base any opinion on them and that I was there but for the one purpose to help Mr. Watts to do what he had promised." Then I gave it as my opinion to Judge Utz that if he had made up his mind to remove his Receiver the better plan to pursue, or the better procedure to pursue, would be to let his Receiver come into this Court and make himself a party to this Court by inter-pleading, setting up all the facts from the incipiency, from the beginning, when Mr. Watts and the New. Albany Trust Company appeared before you, and submit to your jurisdiction and get a determination here. That would be the better mode of procedure. He turned to Mr. Kelso and he said, "You bring notice, official notice to the Court, of the fact, of the facts of the delivery of this plant"—I think that had

been delivered in the meantime—"and I will remove the Receiver and will appoint you."

Q. Now, Mr. Sachs, after that statement did you continue there or what took place next? Just go on and state it as it was.

A. That was up to the noon hour. Mr. Utz, Judge Utz turned to Mr. Kelso and he said to him, go and prepare such a statement—I supposed he had reference to the statement bringing to the Court's knowledge the facts—and I will remove the present Receiver and appoint you.

Q. Did you gentlemen go to lunch then?

A. Then Mr. Kelso asked me to go by his office and wait for him and he was not going home to dinner and he would go and get some oysters, take me to some place where we could get some oysters; I then went to Mr. Kelso's office.

Q. What took place at his office, Mr. Sachs?

A. At Mr. Kelso's office he went into the front room and dictated some paper and came back. It was a long room and I was sitting in the back room reading the paper; and he came back there and he said, "Mr. Sachs, I wish you would sign this statement for me bringing these facts to the Court's notice;" why, I said—which were substantially, I believe, I didn't read it very carefully, in the line with what I have said—I said, "Mr. Kelso, I represent neither party nor privy in this thing; I have no interest in it one way or the other." "Well, he said, I can fix that. I have got any number of creditors. You can take any creditor." He then walked to the front part of the house and he destroyed that paper; then brought to me a second paper that I signed, believing that what in my opinion was the course of procedure to follow, would be followed, that is to file an interpleader in this Court setting up all those facts.

Q. Did Mr. Kelso assign any reason why he wanted you to sign that paper?

A. Oh yes; he said that as the Court had signified its willingness to appoint him as receiver, he either could not, or felt a delicacy in signing it.

Q. Was there anything said about whether or not he was disqualified under the Statute to become Receiver provided he was attorney of record, or anything of that kind?

A. I don't think—I don't remember that he said that he was disqualified under the statute, but he didn't like to appear as having one Receiver removed and having another appointed.

By the Court:

Q. Now, the paper that you signed at that time is the petition that appears in this record and which was read here yesterday upon which Judge Utz removed the New Albany Trust Company and appointed Mr. Kelso as Receiver?

A. Yes sir.

Q. And you signed that as the attorney of whom?

A. I don't know, if you honor please, because I haven't got the paper before me and I haven't it in mind.

Q. Could you refresh your recollection by looking at the copy of the petition?

A. How I signed it?

Q. Or for whom you were signing that paper?

A. (After the witness had looked at a paper in the certified record of proceedings of the Floyd Circuit Court) United States Tube Company. It just happened exactly as I told it to you.

Q. Now you signed that petition requesting Judge Utz to remove the New Albany Trust Company and appoint Kelso as Receiver in its stead?

A. Yes sir.

Q. And the last thing that Judge Utz had said to you upon the proposition was that he would find some way to take that property?

A. Yes sir.

Q. You have so testified haven't you?

A. Yes sir.

The Court. Proceed.

By Mr. Smith:

Q. In that petition that his honor states to you, the petition that asks for the removal of the Trust Company and the appointment of Kelso, is there anything said about Kelso in that petition?

Mr. Kealing: The petition shows for itself.

A. Well, if your Honor please, I don't know that that was the petition that the Court acted on or not; I never saw it afterward.

By the Court:

Q. Do you want to qualify your statement of that awhile ago?

A. What was the statement?

The Court: Mr. Stenographer read the question and answer to the witness.

A preceding question and answer was read by the stenographer as follows: "By the Court. *Q.* Now the paper that you signed at that time is the petition that appears in this record and which was read here yesterday upon which Judge Utz removed the New Albany Trust Company and appointed Mr. Kelso as Receiver. *Answer.* Yes sir."

The witness: I don't know, your Honor; I don't know whether that petition was ever filed; I don't know what ever became of it; I never saw it after that moment.

By Mr. Smith:

Q. Did you know what order was made upon that petition at that time, Mr. Sachs?

A. I did not; I did not.

Q. What did you do with the petition after you had signed and sworn to it?

A. Left it with Mr. Kelso.

Q. Did you prepare any order or have anything to do with the preparation of any order upon that petition?

A. I did not.

Q. Did you ever until after these proceedings in this court were instituted against you, that is the citation, know what order had been taken upon that petition?

A. I did not, and I will say further that I believed that when that petition was signed that the intention was that it be carried out just exactly as I have given my opinion that it should be; that the new receiver would appear here in this court and set up all the facts by interpleader and have the question determined.

By the court:

Q. By this court?

A. Yes sir; by your court.

By Mr. Smith:

Q. Judge Utz had told you before that, I believe you say, that he was going to remove the receiver and had directed Mr. Kelso to prepare an order and that he would appoint him?

A. He did. He had determined upon that.

Q. Did any conversation occur between you and Mr. Kelso on that occasion in his office in regard to the taking or retaking of this property from the Federal Court Receiver?

A. No sir, I was certain as I—

The Court: You have answered the question; it is unnecessary to add anything.

Q. Was there any conversation in there in regard to you or Mr. Watts or any of you, either one of you, assuming any liability, or agreeing to assume any liability, provided Mr. Kelso accepted the Receivership tendered to him by Judge Utz?

A. No sir.

Q. Why did you sign that petition?

A. I signed that petition because the principal part of the property—all of the property except perhaps a few hundred dollars had been turned over to the Receiver of this Court and I thought that it would be the best way to extricate Mr. Watts from the position of being in trouble in both courts, and by this means I could then, or they could then come and file their interpleader here, and it would only be a delay of perhaps three hours' ride, or the ride to come here and file

the bill, and instead of taking the assets from the Court it would bring the assets here; it would then relieve Mr. Watts from the embarrassing position that he was in. That was my whole and sole object in the thing.

Q. From your conversation with Judge Utz at the time that he instructed the petition to be prepared by Mr. Kelso, did you believe that that course was going to be pursued?

A. I did.

Q. You say you didn't file the petition yourself?

A. I did not.

Mr. Kealing: He has been over that two or three times.

Q. Did Mr. Kelso ever say anything to you at any time, at that time or any other time, did Mr. Kelso ever say anything to you about turning over to you his claims and appointing you as his attorney as Receiver?

A. He did not. You mean to represent those claims?

Q. Yes, I ask this question to find out as to the representation of those claims.

A. He did not. Never.

Q. Did he at any time ask you to act in the capacity of attorney for him as Receiver in said suit.

A. Coming from—

The Court: Answer the question. Read the question to him.

The question was read.

A. Yes; and I refused.

Q. When and where was that and state what took place.

A. The morning that Judge Utz—Friday morning that Judge Utz had said that he was going to remove his Receiver and appoint Mr. Kelso, coming from Judge Utz's office Mr. Kelso said that Judge Utz had told him, after considering numerous other attorneys, mentioning their names—while I may know them by reputation I didn't know them personally—that he wanted Mr. Kelso to employ me. I told Mr. Mr. Kelso I was over there but for one express purpose, which was to try to extricate Mr. Watts and that I didn't want any employment, that he had a good local bar and there was good lawyers at Indianapolis. He said, "well, I don't know that I need any lawyer; this is a statutory proceeding and I am familiar with the laws of Indiana and I can run it myself."

Q. Did Mr. Kelso at the time he drew—at the time you signed this petition of which you have just been speaking, turn over any claim, either the Tube Company's claim or any other claim to you?

A. He did not. I never represented a party or privy.

Q. Was there any agreement of fee, or any payment of a retainer on a fee, either in these matters or in any matter for the Receivership?

A. No sir; never was promised a fee, asked a fee or accepted one.

Q. Did you ever give any advice to Mr. Kelso as to the Receivership at all?

A. Never.

Q. Mr. Sachs I find by the transcript filed as an exhibit to the response of Mr. Watts in this matter that as of date February the 14th there is an order said to have been entered upon some proceeding that Mr. Watts had instituted on that date asking for advice of the Court in regard to the presentation, or the permission to present certain matters involved to this Court, and at the conclusion of that order I find the following appears: "And now comes C. D. Kelso and asks leave of the Court to withdraw as the Attorney of Record for the following named parties, United Gas & Electric Company; United States Tube Company; Indiana Water Company; Simon David; and the Court now permits said C. D. Kelso to withdraw therefrom." Did you ever advise Mr. Kelso to withdraw as attorney for those parties?

A. I did not.

Q. Did you know that such an order had been made?

A. I did not.

Q. Did you ever advise the making of such an order or that it be inserted in the record although made as of date the 20th, that it be inserted in the record that was made on the day of the 14th?

A. I did not. Never heard of it until night before last.

Q. Did you at any time upon that day or at any other time say that you were a great man for records?

A. I did not.

Q. And that it could be inserted in the record while the Court was in session and could be put in that day's business.

A. I did not.

Q. You knew nothing of it then at all?

A. I did not. I didn't know a thing about it; never heard of it until night before last.

Q. Now we have proceeded on that Friday at noon to Mr. Kelso's office and you had told in regard to the preparation of the paper and your signing it. What took place after that?

A. I went with Mr. Kelso to get the oysters.

Q. To what place did you go, do you know?

A. No sir; I don't know.

Q. Did you find any of your friends there when you arrived?

A. Mr. Watts was there.

Q. Was there any understanding or agreement that he should meet you all there?

A. No sir.

Q. None that you remember?

A. No sir. Well I don't know; I was going to say, New Albany being a small place perhaps he was there and I don't know—I could only say I had no appointment or arrangement with him.

Q. You had not been at New Albany frequently before that?

A. No, I had not been to New Albany but once before that and that was I guess ten or fifteen years ago in a transaction with Judge Dowling.

Q. You hadn't had any practice in New Albany?

A. Oh not at all.

Q. Now at the time that you went to lunch there, you had lunch I suppose?

A. Yes, sir.

Q. How long did you remain there do you remember?

A. Well it was late and I guess it took us up to two or half past two I don't remember exactly.

Q. Where did you go to from the lunch room?

A. To Judge Utz's room, Judge Utz's chambers.

Q. The same place? His private chambers where you had been in the morning?

A. Yes, sir.

Q. Who was there when you arrived?

A. Judge Utz I think.

Q. Well who constituted your party then in the room, in the chambers there? Who constituted the party? Who made it up?

A. Judge Utz and Mr. Kelso; there may have been some others in there but I really can't remember.

Q. Do you remember whether or not Mr. Watts was there?

A. Well he came in very shortly after.

Q. He came in very shortly after?

A. Yes, sir; if he wasn't there.

Q. Did any one else come in during the afternoon?

A. Yes sir my younger brother, J. G. came in.

Q. The one that is called Joe?

A. Yes sir.

Q. He came in in the afternoon?

A. Yes sir.

Q. Do you remember about what hour of the day was that he came in?

A. I guess it was close on to 3 o'clock; that was about the time.

Q. Now state what took place in that room that afternoon, Mr. Sachs, as near as you can remember.

A. I don't know that I can go into detail but I can try to give you the result; it was that the Receiver—No, I think—yes, that Judge Utz told Mr. Kelso to prepare an order removing the Trustee and appointing himself and to prepare the bond; that was about the substance of it.

Q. Was there any discussion as to the bond and its cost etc.?

A. Yes, there was a discussion as to the bond and Judge Utz fixed the bond. I didn't pay much attention to it but Mr. Kelso made the remark that it would be an expensive thing to have a large bond. Utz, Judge Utz said that that wouldn't make any difference, it would come out of the costs anyhow, general costs; something or some words to that effect.

Q. Were those orders prepared according to Judge Utz's instructions or do you know.

A. Why, I don't know. Mr. Kelso and Mr. Utz and Mr. Watts and my brother left the chambers; left there.

Q. They left there about that time?

A. Yes sir; after that.

Q. You know where they went of your own knowledge?

A. No, I don't know where they went of my own knowledge.

Q. Where did you go?

A. I remained in the chambers; I had a headache.

Q. What was their occasion of leaving there; do you know why?

A. Why, Judge Utz had told Mr. Kelso to prepare his order removing the trustee for dereliction, or opposing of his authority, or whatever he might choose to call it, and appoint himself, and he went in order to prepare his order, I assumed, and Judge Utz and Mr. Watts went on the invitation of my brother who also invited me but I said I had a headache and remained in the court room.

Q. To go out for refreshments?

A. Yes sir.

Q. That was the time?

A. That was the invitation of course.

Q. And did Mr. Kelso go out with them?

A. He went out with them, yes sir.

Q. You remained in the office there?

A. I did.

Q. Was the invitation extended to you?

A. Yes sir, but I said I had a headache and remained back.

Q. You had a headache?

A. Yes sir, I suffer with vertigo more or less.

Q. You remained in the office and how long did you stay there?

A. Oh, I tilted the chair against the wall—

The Court: The question is how long you stayed there.

A. I can't tell.

By the Court:

Q. How long were you there?

A. Oh, perhaps an hour; in the course of an hour; somewhere in that neighborhood.

By Mr. Smith.

Q. Then where did you go?

A. Then I went out on the street.

Q. Did anyone else come back while you were there?

A. No sir; no, there was nobody came back there, that is not while I was there. I went out to see what became of my brother and Mr. Watts. I didn't find them and I walked around awhile and walked back to the Court House to see if they went around to the Court House and coming out I saw Mr. Watts coming up with some gentleman I didn't know; I asked where my brother was, he said he had just taken that car.

Q. What time was that?

A. I guess it was close to six o'clock; somewhere in that neighborhood.

Q. Taking a car for home?

A. Yes.

Q. What occured then? Go on then and tell what occurred.

A. I went home.

Q. What occurred with you then?

A. I went home.

Q. You went home with Mr. Watts?

A. Yes sir.

Q. Did you see Mr. Kelso any more after he left there?

A. Well, I saw him; he passed us as we crossed the street to take the street car.

Q. When you were leaving New Albany?

A. Yes sir.

Q. Did you see Judge Utz any more that afternoon?

A. No, I don't think I saw him any more.

Q. You and Mr. Watts saw Mr. Kelso when you were crossing the street to go home? About what hour was that Mr. Sachs?

A. In the neighborhood of 6 o'clock.

Q. You don't know of your own knowledge exactly when your brother left?

A. No I do not; I didn't watch the time.

Q. Did you know at that time when you left there that it was the intention of Mr. Kelso or anybody else to give notice to the Receiver and make demand of him for the property that he had in his possession?

A. I did not.

Q. Did you know that any proceedings were contemplated or in course of preparation, or prepared with a view of retaking that property from the Receiver of this Court?

A. I did not.

Q. Did you advise aid or assist in any way any such procedure?

A. I did not. I gave it as my opinion in the morning of that day not to attempt anything of the kind.

Q. Did you believe that any such proceedings were intended to be instituted or followed?.

A. On the contrary I never believed that such proceedings would ever be undertaken.

Q. Well you at that time came home on Friday afternoon?

A. Yes sir.

Q. When were you next back at New Albany?

A. Saturday in the afternoon.

Q. What was the occasion of your visit on Saturday and who accompanied you, if anyone?

A. Mr. Watts went over with me. It was to respond to the process issued against Mr. Watts in the meantime.

Q. Do you remember when that contempt process was issued?

A. No; I really do not remember. I suppose the record will show.

Q. Was Mr. Watts cited to appear?

A. Yes sir.

Q. For what day?

A. For Saturday.

Q. And that was the occasion of your visit over there on Saturday?

A. Yes sir.

Q. What was done with that matter?

A. Respited until the following week.

Q. Some day the next week?

A. Yes sir.

Q. Where did you go when you got over to New Albany on that visit?

A. I am not sure whether I stopped to get some lunch or went directly to Judge Utz's office. That is where I went, I do not remember the direct course.

Q. Do you remember how long you were at Judge Utz's office?

A. A very short time it seemed to me.

Q. Who was at Judge Utz's office at the time?

A. I do not remember anybody but Judge Utz.

Q. Where was Mr. Watts?

A. He was with me, of course, we were together.

Q. Where did you go from there?

A. My impression is that I stayed there but a very short time and then came home.

Q. Did you see Mr. Kelso during that time on your visit over there on Saturday?

A. No sir; I have no recollection of seeing him Saturday.

Q. Did you on Saturday or any other time with Mr. Kelso go through the M. Zier & Company plant there at New Albany?

A. No sir; I do not know where it is.

Q. You did not make any such visit?

A. No sir.

Q. When did you next return to New Albany?

A. Sunday.

Q. How came you to make the visit on Sunday?

A. I was telephoned for by Mr. Kelso and Judge Utz, I think. I was telephoned for.

Q. Do you know who it was from?

A. I do not know positively. Perhaps it was Mr. Kelso or Judge Utz or both of them.

Q. What day was it that you received that telephone?

A. Saturday evening—Saturday night.

Q. Do you remember about what time of night it was?

A. About eleven or half past eleven, somewhere in that neighborhood.

Q. What was the occasion of that visit?

A. Citation to appear here had been made.

Q. Citation from this court?

A. Yes sir.

Q. Did they say on whom it had been served?

A. I do not remember whether they said. It included quite a number of people, and myself.

Q. Did they tell you whether it included you and Mr. Watts?

A. Yes sir; they said it included both of us.

Q. Did you go over next morning, that is Sunday morning?

A. Yes sir.

Q. For what purpose did you go?

A. To see that citation.

Q. How long did you remain over?

A. Perhaps an hour or may be not that long.

Q. Whom did you meet?

A. We came up the street and Mr. Watts and I went towards the court house, and Judge Utz and Mr. Kelso came out, and they said there was no fire in there, that they had adjourned to Mr. Kelso's office, and on the way down I walked with Judge Utz, and I told him again that Sunday morning, "If you had acted on my opinion, all this would

have been avoided. Why were you so stubborn"? or word to that effect.

Q. Sunday morning or Monday?

A. Sunday walking from the court house to Mr. Kelso office.

Q. You came home from there at what time?

A. About noon.

Q. Who was at the meeting Sunday at Mr. Kelso's office after you went from the court house to his office?

A. Some gentleman besides Mr. Kelso Judge Utz and Mr. Watts that I did not know.

Q. The object of your visit then was to examine the citation, and you all talked about the citation?

A. Yes sir.

Q. And the conversation you say you had with Judge Utz was on going from the court house to Mr. Kelso's office?

A. Yes sir.

Q. You say you returned home about noon?

A. Yes sir.

Q. That was Sunday?

A. Yes sir.

Q. Did you go over to New Albany at any other time?

A. I did not.

Q. That ended your trips to New Albany?

A. Yes sir.

Q. With the exception of this Sunday trip, state what the object or purpose was you had in these visits to New Albany Wednesday, Thursday, Friday and Saturday?

A. None on earth except for the purpose of undertaking to get Watts out of the position that he had gotten himself in between the two courts and with a view of conciliating matters and satisfying the court here, by having the receiver there come up here and file his pleading and have the question determined here. That would relieve Watts from the promise he made which had put him in the embarrassing position and would have relieved the situation below? That in my opinion was a better plan to pursue.

Q. Did you ever advise, aid, assist or encourage any other course to be pursued than that?

A. I did not.

Q. Did these parties meet you again, and if so where?

A. Yes sir; they came over to the office on Monday.

Q. Tell us how that meeting occurred and who was there.

A. On Sunday Mr. Watts, as our names were included in the citation, suggested that perhaps we had better get ready to prepare some response, and Mr. Kelso asked if he could come over, and we said "yes." Mr. Keslo came over on Monday morning. However, before he came over he tele-

phoned to the office that he was coming. He said that some order had been promulgated from this court or had come down from this court on Sunday. I told him to bring a copy of that order, and that delayed him I think.

Q. Did he finally come over?

A. He did.

Q. Did he bring a copy of the order?

A. Yes sir.

Q. Do you remember the date of that order?

A. I think it was the 17th.

Q. What was the purport of the order—I don't mean for you to state the contents, but I want you to identify the order.

A. My impression is that the order was an appearance of the New Albany Trust Company as receiver of the Floyd circuit court, by its attorney W. W. Watts, and a voluntary agreement to surrender. Those may not be the exact words. The order will speak for itself; but in substance that is what the order was.

Q. Did you examine that order and read it there?

A. I did.

Q. Who was present when Mr. Kelso first came in and brought the order?

A. I think my brother M. A. Sachs was in the room?

Q. Morris Sachs?

A. Yes sir.

By the Court:

Q. Was that on Sunday?

A. No sir; Monday.

By Mr. Smith:

Q. When you read that order, did you make any statement to Mr. Kelso?

A. Yes; I said to Mr. Kelso that ends it.

Q. What did you mean?

A. Mr. Kelso and Judge Utz were insisting that they would not—it was Judge Utz insisted that he would not carry out the promise that Mr. Watts had made because no order had come down. That had been spoken of there in Mr. Kelso's presence every day.

Q. What time did Mr. Kelso get over to your office on Monday?

A. Ten or half past ten or eleven; he was late.

Q. Did any further conversation occur at the noon hour in regard to the matter except a discussion of the order relating to these transactions, I mean.

A. Oh yes; there was a good deal of talk, I can not remember exactly what was said.

Q. Was there anything said that morning between Mr. Kelso and anyone else in regard to you or Mr. Watts? I am speaking of the morning session.

A. Yes sir.

Q. In regard to you or Mr. Watts assuming any liability or having assumed any liability by reason of Mr. Kelso's accepting the Receivership.

A. Jonny Watts—John B. Watts—asked Mr. Kelso a question.

Q. What was the question.

A. Whether his brother Will had anything to do with retaking the property—W. W. Watts, or violating his promise I do not remember exactly the words. Mr. Kelso responded "No, he had nothing in the world to do with it."

Q. Was any question asked whether or not W. W. Watts had assumed any liability by reason of the taking of the property.

A. I do not hardly think there was.

Q. Read that question.

The question was read.

A. His brother asked him whether he was responsible in any way or had made any promise and Mr. Kelso said no.

Q. Did that end the conversation that morning?

A. Yes sir; I think it did.

Q. Did you all go out to lunch?

A. Yes sir.

Q. Did you take Mr. Kelso to lunch?

A. Yes sir.

Q. Was W. W. Watts there that morning at your office?

A. Yes sir.

Q. And John Watts?

A. Yes sir.

Q. How long did they remain there?

A. Up to the time we adjourned for the noon hour.

Q. What time did they get there, speaking with reference to the time that Mr. Kelso first arrived?

A. Soon after I telephoned for them.

Q. You adjourned: And did you return in the afternoon to your office?

A. Yes sir. In the meantime during the morning sometime, Judge Utz telephoned to know if he could come over and I told him yes.

Q. Did he say when he would come over?

A. About half past two or three I think.

Q. You got back to the office, you and Kelso and Watts did you?

A. Yes sir.

Q. Did Judge Utz come over.

A. Yes sir.

Q. Was John Watts over there too?

A. Yes sir.

Q. State what took place in the afternoon conference—I will ask you first, was Joe Sachs there?

A. Yes sir he came in?

Q. And Morris Sachs, and John Watts and Will— Go on.

A. Some discussion came up about the question of payment of costs in this Court between Judge Utz and Mr. Kelso. Mr. Kelso said that Mr. Watts he thought ought to bear the burden, or some words to that effect. Mr. Watts was not there at that time and I telephoned to Mr. Watts. Mr. Watts came in and I told him of it and he seemed very much astonished, that he had made no obligations to pay the cost and had no interest in the thing was taking no part in the thing and could not imagine where they thought such a thing came from.

Q. That was the costs of defending these citations?

A. That is the way I understood it. Mr. Kelso said it would cost quite a sum of money and he was not able to bear it. Judge Utz said "It won't cost a great deal and I have some money in Court, or in the Receiver's hands," (I don't remember which remark it was) "and you pay all the costs out of that."

Q. Did he claim at that time—Kelso ever claim that you had assumed any liability?

A. No sir.

Q. Did he claim at that time that he thought any of the burden of the expense ought to fall on you?

A. No sir.

Q. He was insisting that Watts ought to bear it and for that reason you telephoned over to Watts to adjust the matter with him.

A. Yes sir: That is what he said.

Q. Did you prepare any response that Monday afternoon?

A. No sir.

Q. Did you proceed with the matter any further than that discussion?

A. No sir; I told him that they were insistently holding that property—that is Judge Utz—because they said there was no order and he was not going to keep that promise. Just as soon as I laid my eye on the order I said, "that ought to settle it;" and I told Mr. Kelso when he showed me the order, "Now, go up and deliver up that property."

Q. By the Court: What did you mean by "ought to settle it?"

A. I was insisting at the promise—

Q. I understand that. You say when you saw this order, you said "that ought to settle it?"

A. Yes sir.

Q. You mean by that that the property belonged to the Receiver of this Court.

A. There is no doubt about that.

Q. That is what you meant?

A. Yes sir. Judge Utz said "there is nothing in that order that don't relieve the situation," or words to that effect.

Q. By Mr. Smith: Now, as I understand you, you were advising the procedure as you have stated it heretofore, but Judge Utz was insisting otherwise?

A. Yes sir; that is it.

Q. Insisting that he ought not to take any procedure or recognize the matter and one reason he was assigning that the order had not been made?

A. Exactly.

Q. And when the order arrived, you thought that relieved the situation?

A. I thought that would end it and he would be satisfied. I was insisting all the time that the moral obligation ought to be carried out.

Q. On that afternoon or at any time during that Monday at your office, was there anything said in regard to whether you or Mr. Watts should attend Court here?

A. Yes sir; that was spoken of.

Q. Give us what was said in regard to that.

A. We had made up our minds—

By the Court: He asked you to tell what was said.

A. Let me see if I cannot give it to you. Mr. Watts said that he was coming and so did I. Judge Utz said, as we have not been cited, he preferred that we did not come.

Q. Is that all that was said?

A. I am trying to think. Minor things that made no impression on the mind are hard to remember. I can not say that is all but I know the result of it was that Judge Utz and Kelso did not want us to come.

Q. By Mr. Smith: Was there anything said by you to the effect or in substance that you would not come, that you could not afford to or would not testify against your friend Watts and that you would go to Jamaica before you would?

A. No sir.

Q. Or that you would go to Texas or California?

A. No sir; I never said anything at all of that character.

Q. You were not served with process in this court that caused your attendance?

A. No sir; it is voluntary.

Q. Did you at any time, or under any circumstances aid, advise, abet or encourage either the taking or the withhold-

ing of this property from Connor, the Receiver of the United States Court?

A. I did not.

Q. Were you ever at any time after you had known of the case, that is Wednesday, you say you first knew of it, knowingly guilty of any contempt of this court?

A. No sir.

Q. Did you at any time knowingly or intentionally violate any order of this court?

A. No sir. I never intended to violate any order of this Court knowingly at all.

Q. Did you ever advise or encouage anyone else to do so?

A. I did not, or any other Court, I might say.

Q. You have said that in the morning John Watts put the question to Kelso in regard to whether his brother W. W. Watts had incurred any responsibility by agreeing to indemnify Kelso in case of his accepting the Receivership or in any other way. Now, I will ask you whether or not John R. Watts put a question in substance the same to Judge Utz in the afternoon?

A. Yes sir; and he answered no and told him he did not have anything to do with it.

Q. Was anything said about either one of them giving an affidavit that W. W. Watts could use up here in court?

A. John Watts asked that and they said said they would give him the affidavit.

Q. There was no question of that kind as to you?

A. No sir.

Q. Nothing said about your being responsible?

A. No sir.

Q. I will ask you if at any time you ever prepared or assisted in the preparation of any order or pleading or paper relating to these transactions for Mr. Kelso except the signing of the paper you have heretofore spoken of?

A. I did not.

Q. Did he ever submit for your opinion, investigation or inspection any paper prepared for him relative to this transaction except the paper that you have mentioned?

A. He did not and I do not know that he went thoroughly over that one.

Examined by Mr. Fairleigh:

Q. You have stated to the Court that you went to New Albany, and whatever you did in these transactions, all of them, was for the sole purpose, as I understand you to say, of aiding Mr. Watts in accomplishing the purpose of his statement to this Court on the 17th.

A. That was my sole purpose.

Q. Was there any ulterior purpose—any purpose beyond that at that time or any ulterior purpose after that?

A. None whatever.

Q. Was there any agreement, understanding or intention on your part or on Mr. Watts' part, that anything else than that should be done by you?

A. No sir.

Q. Did you do anything else than that?

A. I did not and all that I did was tending towards that end.

Cross examined by Mr. Kealing:

Q. Who composed your firm?

A. M. A. Sachs, myself, and my younger brother J. G. Sachs.

Q. Did you or your firm represent any creditor in this M. Zier & Co. proceeding?

A. I will have to answer in this way:

Q. Just answer yes or no?

A. I do not know because my younger brother—

Q. Did you?

A. No sir.

Q. Prior to the time of your conversation with Mr. Watts' when he asked you to go over to New Albany to help him, did you know anything of the condition of the M. Zier & Co. suit?

A. No sir.

Q. Nothing at all?

A. Absolutely nothing?

Q. Did you or your firm have any other business in the Floyd Circuit Court prior to that time?

A. Prior to what time?

Q. To the time you went over there to assist Mr. Watts?

A. At any time in my life?

Q. At that time, I will say?

A. Any other business?

Q. Any other business?

A. No sir I did not.

Q. Then anything you or your brother went over on was on this business?

A. I can only answer for myself.

Q. You do not know why your brother went over?

A. Yes sir I do.

Q. Why?

A. He went over representing Walters' Brewery that Mr. Hester can tell about.

Q. I asked you why he went over?

A. I am telling you; they were having some boilers completed over there.

Q. For whom?

A. For the Walters people.

Q. What had that to do with the M. Zier & Co.?

A. I do not know. I expect you had better let my brother explain that.

By the Court: Answer the question.

Q. Don't you know?

A. No sir.

Q. You have not heard from either of your brothers what the business was about,—answer yes or no?

A. Yes sir, I have heard.

Q. What was it about, what did they tell you?

A. They told me that M. Zier and Company had built some boilers or were about to build some boilers for the Walters that Mr. Hester represented, and they had put up some money and he was over there to have it finished.

Q. Walter in a sense was a creditor of M. Zier & Co.?

A. I can not say, I don't know?

Q. Then when Mr. Watts called on you or when you went with him to New Albany on Wednesday afternoon, you knew nothing of the condition of M. Zier and Company?

A. No sir.

Q. What did he tell you on the way over?

A. I have told it in my direct examination.

Q. Tell it again.

A. He told me in substance that he came up here to Indianapolis; that he appeared here with some papers from the Floyd Circuit Court; that some question came up about a telephone message that went over the wire and there seemed to be some misunderstanding, and it seems that some orders were entered in the Floyd Circuit Court that this court thought should not have been entered resulting from the telephone communication. The result of that was that he had promised the court here to advise his clients to deliver the property.

Q. Is that all he told you?

A. That is all I remember.

Q. Did he tell you this court had appointed a receiver for that property?

A. No, not that I remember.

Q. Did you not know when you went over to represent him that this court had appointed a receiver?

A. I may have heard so, I am not sure.

Q. I mean did not Mr. Watts tell you?

A. No sir not that I remember. It was simply—

By the Court: Just answer the question.

Q. Did you know that the receiver had been appointed by the Floyd Circuit Court?

Mr. Miller: It is usual when a witness answers a question directly that then he may make an explanation.

The Court: That is where an explanation is proper. This is a lawyer of thirty-one years' experience and I am going to require him hereafter to answer the questions.

Mr. Miller: Will not Your Honor permit him to explain?

The Court: Whenever I think it is proper I will. There is no explanation needed or necessary there. We may just as well understand now that these evasions and explanations will not be permitted any longer, you must answer the questions.

By Mr. Kealing:

Q. Did you know that a receiver had been appointed by the Floyd Circuit Court for the M. Zier & Co. property?

A. Yes sir.

Q. Did you know or did Mr. Watts tell you that there was a clash of jurisdiction between the two courts at that time?

A. No sir.

Q. When he told you that he had promised to advise that this property should be turned over to whom did you understand he had advised the property to be turned over to?

A. To this Court?

Q. Then did you infer that there was a clash of jurisdiction?

A. I could not gather that. I did not know what there was.

Q. Do you mean to say to this court that without fully knowing the conditions, you went over to represent him before the Judge of the Floyd Circuit Court?

A. I went over—

Q. Just answer that yes or no.

A. No, but I want to explain.

The Court: You may explain that.

A. All I knew was what Mr. Watts had told me.

By Mr. Kealing:

Q. He did not tell you that there was a receiver appointed by the United States Court, and you did not know that, is that correct?

A. I would say no, I don't think I did.

Q. Then when he told you that he had promised to advise that this property be turned over, you did not know to whom it was to be turned over?

A. No I did not.

Q. And yet you were going before the court to save him from the wrath of the Floyd Circuit Court?

A. Yes sir.

Q. That is all you knew when you went to appear before Judge Utz on Wednesday?

A. That is all.

Q. Did you go directly to Judge Utz's office when you reached New Albany?

A. That is my best impression, I do not know of any other place that I went to.

Q. At that time, had you any acquaintance at all with Charles Kelso?

A. No sir.

Q. Was there anything said about Kelso in Judge Utz's office on Wednesday night?

A. Yes sir.

Q. What was said?

A. Judge Utz asked me to go by Kelso's and ask him to come there Thursday morning.

Q. Asked you to go by?

A. Watts and me.

Q. Did he ask you or Watts?

A. It was addressed to both of us and I assumed—

Q. Had you ever met Judge Utz before?

A. Never had.

Q. What was the occasion of using Kelso's name Wednesday night?

A. I do not know.

Q. Did you know that Kelso had anything to do with this?

A. No sir.

Q. Had Watts told you?

A. He had not.

Q. Did you ask the court why he wanted Kelso?

A. No sir.

Q. Did you ask the court why he wanted you to come back?

A. I did not. I want to explain that last question. I assumed that he wanted me to come back with Watts next morning—

Q. I didn't ask you what you assumed, but what he said.

A. He said to go by Kelso's office and tell all the attorneys in the case that I want them here tomorrow morning?

Q. In what case?

A. He did not say what case, but I am giving you his language.

Q. You were introduced to Judge Utz for the first time that evening?

A. Yes sir.

Q. Did he greet you cordially.

A. Just about as angry a man as you could see.

Q. Did he greet you cordially or not?

A. I do not remember the greeting.

Q. He was very much enraged?

A. Soon after Mr. Watts began to talk—

Q. Did he speak to Mr Watts?

A. Oh yes I think he did.

Q. Now just tell us what the court said that night?

A. That evening?

Q. Yes?

A. I said that I had come over there with Mr. Watts as his friend and attorney.

Q. What for—what did you tell the court—I want to know your language as near as I can?

A. That he had been to Indianapolis and I think maybe the judge had known something of it—

Q. Just tell what you said—I don't care what the judge knew or didn't know?

A. I said Mr. Watts had been to Indianapolis and made a promise to turn over that property and I was there for the purpose of aiding him to do that and to expunge from his record certain papers that had been filed?

Q. Did you know when you told the judge that who the property was to be turned over to?

A. No more than I told you turned over to the court.

Q. How could you aid him if you did not know where it was to be turned over or to whom?

A. It was to be turned over to this court.

Q. You knew it was to be turned over to this court?

A. I have repeatedly said that.

Q. You knew this court had appointed a receiver?

A. I did not.

Q. Did you think the property would be turned over to the court itself?

A. I did not know whether it would be turned—over—

Q. As a lawyer did you know what that meant?

A. I knew what that meant.

Q. When Mr. Watts told you he had agreed to advise the turning over of this property to this court, as a lawyer did you know what he meant?

A. Certainly.

Q. Then you knew there was a receiver appointed or an officer to take it?

A. Ah! Certainly I did.

Q. That is what I have been trying to get you to say. Then you did know that there was a clash of jurisdiction as a lawyer?

A. No. I cannot admit that. I did not.

Q. Had you no idea what the trouble was?

A. None more than what Mr. Watts had told me.

Q. But if Mr. Watts did not explain to you fully and you were going to represent him, don't you think he ought to

have explained to you fully so that you would have known how to represent him in court?

A. He explained fully enough to me.

Q. Are you in the habit of going to courts without full information of the cases you try, is that your practice?

A. I think not.

Q. It was in this case?

A. No sir, I think not.

Q. The Wednesday night you went to Mr. Jewett's office I have—

A. I have no recollection of going to Mr. Jewett's office.

Q. Do you know Mr. Fitzpatrick?

A. Yes sir.

Q. Did you meet him and speak to him there?

A. Yes sir.

Q. And he said Hello Sachs?

A. Yes sir.

Q. You do remember that?

A. Yes sir.

Q. Your memory is changed now?

A. Yes sir.

Q. Did you not ask Mr. Watts or Henry Jewett to telephone to Mr. Kelso to remain in his office until you came?

A. I did not.

Q. Did not Mr. Watts?

A. I did not hear him.

Q. I will ask you if in the presence of Mr. Fitzpatrick and Col. Jewett, Henry Jewett did not telephone to Mr. Kelso and ask him to remain in his office until two gentlemen came there?

A. If he did, I do not know it.

Q. The absolute fact is that you have no memory on that subject?

A. I absolutely do not know that Mr. Jewett telephoned to Mr. Kelso.

Q. Why did you go to Mr. Jewett's office?

A. If I went there—

Q. You said you went there: Why did you go there?

A. For the purpose of telling Mr. Jewett that Judge Utz wanted to see all of the lawyers on Thursday.

Q. How did you know that Mr. Jewett was a lawyer in the case?

A. Mr. Watts knew who the lawyers were.

Q. Did he tell you?

A. When I say I individually, I take it that Mr. Watts was with me and he was seeing the lawyers.

Q. You say you went to Mr. Kelso's office that evening?

A. Yes sir.

Q. How long did you remain there?

A. I didn't stay there but a very few minutes, 10 or 15 minutes.

Q. Not over 10 or 15 minutes?

A. No.

Q. Have you told in your original examination all the conversation that occurred there?

A. Yes sir; to the best of my recollection.

Q. I will ask you if it is not true that you went there for the purpose of asking Mr. Kelso to become Receiver?

A. It is not so.

Q. I will ask you if you did not at that time ask him and advise him to become Receiver?

A. I did not.

Q. I will ask you if it was not talked about in the office that night, the question of whether there would be contempt proceedings in this Court and that you advised Mr. Kelso to become Receiver and told him never in your practice had you heard of a man being put in jail for a civil contempt or contempt in civil cases.

A. No sir; I said no such thing.

Q. Did not Mr. Kelso say to you that he would accept the appointment if you gentlemen, meaning you and Watts, would guarantee the costs in the case saying he was a poor man and was unable to fight other peoples' battles?

A. No sir; nothing of the kind was ever said.

Q. Did you not say to Mr. Kelso that night in his office that you thought the Floyd Circuit Court had jurisdiction?

A. I did not.

Q. You agreed, however, to meet next morning, Thursday at 9 o'clock.

A. I was directed to come back.

Q. By whom?

A. By Judge Utz.

Q. He didn't tell you why he wanted all the attorneys?

A. He did not.

Q. You came to New Albany on Thursday morning?

A. Yes sir?

Q. And went to the Court House?

A. Yes sir.

Q. From the Court House did you not go to Mr. Kelso's office?

A. On Thursday?

Q. Yes, you and Mr. Watts.

A. No sir.

Q. When you were there on Thursday, was Mr. Jewett sent for?

A. If he was I can not exactly remember. Mr. Jewett came in and out of there with some figures on one of those dates—

Q. I did not ask you that. Was he sent for Thursday morning?

A. I did not send for him.

Q. Was he sent for by any one to your knowledge?

A. Not to my knowledge.

Q. Who was in Judge Utz's Court room that morning besides yourself and Mr. Watts?

A. Mr. Kelso was there, and if there was any one else I do not remember.

Q. Was Mr. Jewett there?

A. My impression is that the younger Jewett was in and out and then the tall one came.

Q. You yourself had asked Mr. Jewett to come the night before—

A. I, no.

Q. Did you not say you went to his office?

A. Yes sir; but I did not say I asked him to come.

Q. It was Watts?

A. Yes sir.

Q. It was you that asked Mr. Kelso?

A. I don't know whether I did or Watts.

Q. Did you not testify originally that you asked him?

A. If I did it was true.

Q. What do you say now?

A. If I said it it is true.

Q. I want to know what you say now?

A. That is my best recollection.

Q. What did you talk about that morning?

A. Thursday morning.

Q. Yes?

A. I started to ask Judge Utz for a hearing on the question of expunging or striking out the papers that were objectionable—

Q. You wanted to expunge the record?

A. I did not quite get through with my answer please—to expunge the papers from the record and take the orders from the order book and carry out the promise that had been made to this court.

Q. You did not make this engagement with Judge Utz, did you, he ordered you back as an attorney?

A. Yes sir.

Q. When he came back—and you came back—what did he tell you he wanted you to come back for?

A. He didn't say a word.

Q. And without his saying a word you began expunging the record?

A. I did. Now I want to explain that. When I left the evening before—

Q. I don't care about the evening before. I want wha occurred that morning.

By Mr. Miller: I think he has a right to explain.

The Court: But his explanations don't explain and whe he is asked a single question on what occurred and eac time attempts to explain, it gets a little bit monotonous What is it you want to explain?

A. Simply to explain the court ordered me back I assume it was for a hearing—

Q. By Mr. Kealing: I didn't ask you what you assumed He ordered you back. He didn't ask you to come back When you got back the next morning did he tell you wha he wanted you to come for?

By the Court: Answer that question.

A. I don't remember that he did.

Q. But you started on the business you have detailed?

A. Yes sir.

Q. How long did it take for you to make your talk to th Court that morning?

A. I did not get a chance to talk very long before h interrupted me.

Q. How long did you talk is my question?

A. Not over five minutes.

Q. Why did he interrupt you?

A. Because he said he was not going to carry out tha promise.

Q. That was about 10 o'clock, was it not?

A. No sir.

Q. What time was it?

A. I don't think we reached there much before 10.

Q. What time did you reach there?

A. I think it was in the neighborhood of 10 o'clock somewhere in that neighborhood.

Q. If you got through in five minutes why were you ther until noon in New Albany?

A. Just waiting for the Judge to give me a hearing.

Q. Did he tell you he would give you a hearing that day

A. No sir; but he did not say he would not.

Q. You just sat around the court room?

A. Yes sir; there was other business being transacte and he was attending to other business and I thought h would get back to it, and in the meantime Mr. Jewett an the elder Jewett came in. Time passed like I have waite on courts before.

Q. When Mr. Jewett came in nothing was said about th M. Zier & Co. business?

A. Yes sir; the younger Mr. Jewett came in with som figures about this business and the elder Jewett came i

and explained in substance that his brother had been up here and Mr. Watts and had promised the Court—

By Mr. Kealing: I didn't ask you that?

By Mr. Smith: Can't he explain that?

By the Court: The whole answer is not responsive.

By Mr. Smith: I submit that he asked him what else was said.

The question was read by the reporter.

By the Court: Answer that yes or no.

A. Yes sir.

By Mr. Kealing:

Q. Did you take any part in the discussion that morning? Answer that yes or no.

A. No sir.

Q. None whatever?

A. None whatever.

Q. Why did you not go away then?

A. Waiting for a hearing.

Q. Did you get a hearing?

A. I did not.

Q. Did you ask for a hearing?

A. Yes sir.

Q. When?

A. That morning.

Q. After you asked it the first time did you ask it the second time?

A. Yes sir.

Q. At what time?

A. After Mr. Kelso had said that the property was delivered over.

Q. That was after you learned that the property had been delivered over. To whom did you understand?

A. I did not learn to whom.

Q. Did I not understand you to say in response to a question by the Court awhile ago that you learned it was to the Receiver of this Court?

A. Not from Kelso.

Q. From anybody did you learn?

A. I learned from Mr. Watts that the property had been delivered over to some officer of this Court or to the Court.

Q. On that Thursday morning?

A. No sir.

Q. Did you not state awhile ago that you learned on Thursday that this property had been turned over to the Receiver?

A. Yes sir; that is right.

Q. Did you not know who the Receiver was at that time?

A. No sir.

Q. Did you not know his name was Connor?
A. No sir.
Q. You never had heard it?
A. No sir.
Q. Mr. Connor's name was not mentioned in the Cour room?
A. No sir. You remember I was a stranger there—
Q. But you were there on law business?
A. No sir.
Q. I thought you were there to represent your frien Watts?
A. Yes sir; but that was hardly law business.
Q. You think these attorneys here are hardly on la business to-day?
A. It is a matter of pleasure to them I assume.
Q. But it is law business. On Thursday about noon, yo and Mr. Watts went back to Louisville. You returned t New Albany on Friday morning, did you not?
A. Yes sir.
Q. You were telephoned to come back?
A. Yes sir.
Q. By whom?
A. I do not know who 'phoned.
Q. Did you answer the 'phone; did you talk with th person who asked you to come over?
A. My best recollection is that I did?
Q. Did that party say who it was talking?
A. He did not.
Q. You went over without knowing who wanted you t come over?
A. I knew who wanted me.
Q. How did you know?
A. The party at the 'phone told me.
Q. Told you what?
A. That Judge Utz wanted me to come over.
Q. You didn't ask who the party talking was and did no know who it was?
A. No sir.
Q. But you went over?
A. Yes sir.
Q. Did he tell you at what time to come over?
A. Yes sir.
Q. When?
A. He told me to come over in the morning and brin Mr. Watts.
Q. That was the morning, was it not, that you signe the petition as attorney for the United States Tube Com pany?
A. Yes sir.

Q. I will ask you if it was not said by Mr. Kelso on the Wednesday meeting that he could not act as receiver because he was attorney of record for some of the creditors and you suggested that he could withdraw and become Receiver?

A. No.

Q. You say this petition that you signed was not written out by you on Friday?

A. No sir.

Q. And you did not read it very carefully, or did you?

A. I don't think I did.

Q. You swore to it?

A. Yes sir.

Q. Are you in the habit of swearing to things that you know little about without reading them carefully?

A. No sir.

Q. Did you in this case?

A. I took it for granted that I read it, I will assume the responsibility. I can't deny that.

Q. By the Court: You say you can't deny it?

A. I say I take it for granted—

Q. Was that what you said? Read that Mr. Reporter.

The answer referred to was read by the reporter.

Q. You knew at that time on Friday morning that the Receiver had been appointed by the United States Court?

A. Yes sir.

Q. You knew what his name was then, did you not?

A. From my personal knowledge, I can not say I did.

Q. You don't know.

A. I did not have any interest in it one way or the other.

Q. I will read you this: "Comes now the United States Tube Company by D. A. Sachs attorney and respectfully represents to the Court that on the 19th day of February 1903, the said New Albany Trust Company as such Receiver of said M. Zier & Co. did wrongfully, unlawfully and without leave of this Court turn over and surrender the possession of the M. Zier & Co. Boiler Plant located at the Northeast corner of Upper 1st or Pearl and Oak Streets, in the city of New Albany, Indiana, to one Fred D. Connor who is acting as Receiver in bankruptcy claiming to have been appointed by the United States District Court of Indiana sitting in bankruptcy." You swore to that?

A. Yes sir.

Q. By the Court: You say you can't deny that; that is because it is a matter of record?

A. No sir.

Q. Do you mean to say you would but for that?

A. No sir. What I meant was that I could not deny that I read that paper.

Q. By Mr. Kealing: When you swore to this did you believe what was in the affidavit.

A. Why certainly I believed it to the best of my knowledge and belief.

Q. Then you believed that this U. S. Court Receiver had no authority to take that property? And was wrongfully withholding it? Because that is what you swore to.

A. Is that what I swore to?

Q. Let me read it.

A. Let me.

The witness here read the paper referred to.

Q. Now I will read it. "Comes now the United States Tube Company by D. A. Sachs attorney and respectfully represents to the Court that on the 19th day of February 1903 the said New Albany Trust Company as such Receiver of said M. Zier & Company did wrongfully, unlawfully and without leave of this Court turn over and surrender the possession of the M. Zier & Company Boiler Plant located at the Northeast corner of Upper First or Pearl and Oak Streets, in the City of New Albany, Indiana, to one Frederick D. Connor, who is acting as Receiver in Bankruptcy, claiming to have been appointed by the U. S. District Court of Indiana." You swore it had been wrongfully turned over?

A. Yes sir.

Q. Was it true when you swore to it?

A. Yes sir; that the New Albany Trust Company wrongfully turned it over.

Q. You believed that when the New Albany Trust Company turned it over, they had wrongfully turned it over?

A. That was my opinion.

Q. Is it your opinion now?

A. It is my opinion that the New Albany Trust Company delivered that property to the Receiver of this Court without some order of the Floyd Circuit Court.

Q. Yes; but when you signed that affidavit you knew that Mr. Watts told you that he as attorney for this Court had agreed to advise that it be turned over?

A. Yes sir.

Q. You knew that the Court had ordered it turned over, did you not?

A. At that time?

Q. At the time when you made that affidavit?

A. No; I did not know that the Court had ordered it to be turned over, but that would not make any difference to me.

Q. Answer the question whether you did or not.

A. No sir.

Question by the Court: You say it would not make any difference to you whether this Court had ordered it turned over or not?

A. I would make Watts carry out his promise whether he had the order or not.

Q. That is what you meant to say a moment ago?

A. Certainly, I would make him carry out his promise whether the order had ever been entered.

Q. By Mr. Kealing: Further in this affidavit you ask that such New Albany Trust Company be cited to appear in chambers before that Court on the 21st of February, which was on Saturday. Tell the Court whether you didn't appear that afternoon in that Court.

A. On Saturday?

Q. Yes.

A. Yes.

Q. And you knew that you had asked that these people be cited to appear at 3 o'clock when you appeared?

A. I did not know a thing about it.

Q. You had signed that affidavit the day before.

A. I had signed it and left it with Mr. Kelso.

Q. You knew what was in the paper?

A. Yes sir.

Q. You did not sign it for fun?

A. No sir.

Q. You knew it was to be filed.

A. No sir.

Q. Do you mean to say that you signed and swore to a paper and left it in his possession and that you did not know it was going to be filed?

A. I did not know it.

Q. Do I understand you to say that to a stranger you had only met and known for twenty-four hours—on his request you made an affidavit of this kind, not knowing what he was going to do with it; do you want the Court to understand it that way?

A. No sir; he was to do just what I had told him to do.

By the Court: That is not the question.

The question was read by the reporter.

A. I did not. I knew what he was going to do with it if he did what I told him.

Q. If you believed and had advised the Receiver of the State Court, to file an intervening petition in here, why was it necessary to get a new Receiver, why could not the New Albany Trust Company file an intervening petition in this Court, why was it necessary to make this affidavit?

A. Judge Utz had repeatedly said he was going to remove the New Albany Trust Company and appoint a new Receiver.

Q. That was because they said they would resign?

A. I don't know. Judge Utz said he was going to remove the old Receiver and appoint another.

Q. Tell the Court if you had no business in New Albany excepting to defend Watts, why was it necessary for you to give them any kind of advice as to what to do in this receivership matter to get mixed up in it?

A. I did not give them any advice.

Q. Did you not say that you advised the filing of an intervening petition in this Court?

A. I gave it as my opinion that that was made to settle the difficulty and it would relieve the situation, to come in with a plea and get the judgment of this court and then if they wanted to proceed further that was with them.

Q. That is the only reason you can give as to why you signed and swore to this affidavit?

A. That is the only reason I give. For that purpose and I thought it would relieve the situation.

Q. I will ask you if it is not true that on that day, almost all day, you were in Mr. Kelso's office helping him to draw this petition and the order which follows?

A. I was not.

Q. I know his stenographer?

A. When I see her, I don't know her.

Q. You remember a stenographer being there?

A. She swore me to the petition.

Q. I will ask you if it is not true that while these other people were at the cafe or saloon drinking you were at Mr. Kelso's office helping to draw these papers, not only the petition, but the order of the court and all papers necessary to take this property and that they were drawn up at that time?

A. I was not there, no sir.

Q. Anticipating that the Receiver would refuse?

A. No sir.

Q. By the Court: What is the name of Mr. Kelso's stenographer?

Mr. Kelso: Bertha L. Scott.

The Court: I want a subpoena issued for her.

Q. By Mr. Kealing: Confine yourself now to this Thursday and tell this court how much time you spent in Mr. Kelso's office on that day?

A. Not over an hour.

Q. Was it an hour continuously?

A. I think it was just during that noon hour.

Q. What were you doing when you were in there for the hour?

A. Reading a paper—it may not have been that long. It was a short time.

Q. Did you dictate any paper to the stenographer on Thursday?

A. I did not.

Q. I will ask you if it is not a fact that you sat in the back and that you and Mr. Kelso, or Mr. Kelso dictated this petition and the order and the other papers and at times you made suggestions as to what to put in the papers?

A. No sir nothing except that petition or some papers he had and I saw it.

Q. By the Court: Ask him whether he dictated or suggested to this stenographer who has been named?

Q. By Mr. Kealing: State whether you dictated it to the stenographer or whether while Mr. Kelso was dictating it or any part of it in the presence of the stenographer you dictated anything or suggested anything to Mr. Kelso?

A. I did not.

Q. You say to the court that while this was being prepared you were not present. Is that what you want to say?

A. Which paper?

Q. The petition or the order accompanying it?

A. I was present when the petition was prepared. I said that.

Q. Who dictated that?

A. Mr. Kelso, I did not.

Q. You heard it dictated?

A. I did not. I was sitting in the back room.

Q. Did you read it after it came to you?

A. Yes sir.

Q. And then you swore to it?

A. Yes sir.

Q. Did I understand you to say that at no time have you been in this Zier & Co. plant?

A. No I don't think I ever was there in my life.

Q. I want you to state?

A. No.

Q. I will ask you if on Saturday afternoon in company Mr. Kelso you did not go through the M. Zier and Company plant and that Frederick Ruoff was also present with you?

A. No sir.

Q. And if you didn't make the remark after going through the plant that the whole thing was not worth having any fight about?

A. No sir.

The Court: Issue a subpoena for Mr. Ruoff.

Q. Do you know Mr. Ruoff?

A. I do not know that I know him. I was never introduced to him.

Q. And you say to the court that neither on Saturday the 20th of February, 1903, or any other day—

The Court: That is the 21st.

Q. Or any other day prior to that time or since that time you have been in the M. Zier & Co. plant?

A. No sir I have not been in it.

Q. On Friday afternoon were you at this cafe at any time?

A. No sir.

Q. What time did you go to Louisville that night?

A. Friday?

Q. Friday? yes.

A. At dark, about six o'clock, at dark or about in that neighborhood.

Q. What time did you get to New Albany that morning?

A. About ten o'clock.

Q. And you did not leave New Albany until dark?

A. No sir.

Q. What were you doing there all day except the hour you spent in Mr. Kelso's office?

A. Waiting to be heard in connection with the Watts matter.

Q. Where were you waiting?

A. In the court room—in chambers.

Q. I understood you to say you stayed there about an hour in your original examination.

A. In the morning?

Q. At any time. When you tilted your chair back.

A. That was in the afternoon when they all went out.

Q. You sat there about an hour?

A. It may not have been quite that long.

Q. Where else did you stay from ten o'clock till dark?

A. From ten o'clock in the morning until the noon hour I was at Judge Utz's office and from there I went to Mr. Kelso's office, from there I went to get some oysters and then Judge Utz ordered us back at 3 o'clock.

Q. When you got there about three o'clock how long did you stay there?

A. I was there perhaps until half past four or five.

Q. When was it Judge Utz was invited out to the cafe?

A. Friday?

Q. Don't you know that that party spent nearly the whole afternoon at this cafe?

A. I don't know where they spent their afternoon.

Q. You didn't spend your time with them?

A. No sir?

Q. Where were you?

A. Part of the time in Judge Utz's office lying or sitting in a chair and I was walking around looking for Mr. Watts and my brother and they were looking for me.

Q. Where?

A. They told me they came back to the court house to look for me and I had gone out to look for them and we missed each other.

Q. They were out to this cafe and you were there and you were there for the purpose of squaring Watts with the Judge, was that the reason you were with them?

A. I wasn't with them.

Q. You did not have any part in that?

A. No sir.

Q. How did you spend Saturday afternoon with them?

A. No sir to the best of my recollection I was not with them Saturday afternoon.

Q. You heard Mr. Watts testify?

A. Yes sir; I cannot help that.

Q. You say you were not at the cafe?

A. No sir.

Q. Neither day?

A. Friday I am certain I was not. I may have gone in there Saturday.

Q. Do you mean to say that they held court from 3 o'clock to six, until dark?

A. No sir.

Q. The Judge was not there with you?

A. No sir. I was waiting for my brother.

Q. Do you know where the U. S. Clerk's Office is in New Albany?

A. Yes sir.

Q. You were there that day were you not?

A. Friday?

Q. Friday.

A. No sir.

Q. Do you know Mr. Cardwell, the deputy U. S. clerk?

A. I know him when I see him and I was introduced to him.

Q. Do you say to the court that you were not in Mr. Cardwell's office at any time on Friday?

A. No sir, I was not.

Q. You were there on Saturday?

A. I think it was Sautrday.

Q. Looking at some records?

A. Mr.—

Q. Answer the question.

A. Looking for a record.

Q. What record were you looking for?

A. The order of the 17th.

Q. What else did you look for besides the order of the 17th?

A. Nothing.

Q. Nothing at all?

A. Not that I know of.

Q. I will ask you if you did not look over the records of the whole case on Saturday while you were there?

A. I did not.

Q. And you say to this court, that you at no time said to Mr. Kelso in the presence of Judge Utz that you would be responsible for the costs in this case if he would go ahead in the new receivership—if he would take the receivership,—that you would be responsible for the costs?

A. I never said it.

Q. You spent Wednesday afternoon, all of Thursday forenoon, all of Friday, nearly all of Saturday in New Albany solely for Mr. Watts' benefit?

A. That is true.

Q. And you continually advised Judge Utz and Mr. Kelso that they ought not to pursue this matter any further in the way of getting a new receiver?

A. I did not advise them at all. I gave it as my opinion.

Q. You advised them to take another course.

A. I did not advise them at all.

Q. You gave it as your opinion?

A. Yes sir.

Q. Did they ask you for that opinion or were you around there giving your opinions just free hand?

A. They were asking me for my opinion on hypethetical questions.

Q. Who?

A. Judge Utz.

Q. Give me one hypothetical question that he put to you.

A. He put to me this hypothetical question, whether it would not be advisable for the Floyd Circuit Court to undertake to take from this court the M. Zier & Co. plant and I told him it would not be in my opinion.

Q. When was that hypothetical question put to you?

A. Thursday or Friday, I cannot remember.

Q. Any others that you remember that were put to you?

A. Not specially.

Q. Judge Utz and Mr. Kelso were continually insisting that this matter should be pursued further and a new receiver appointed, is that right?

The Court: Answer yes or no.

A. I cannot answer it yes or no. I can answer yes to one part and yes to the other part.

The question was read to the witness.

A. Judge Utz said that he was going to appoint another receiver.

Q. I will ask you if there was not an arrangement made between you and Kelso that when this summons or citation was issued Watts left Mr. Kelso's office and said in your presence that he would go to Goodbug's and wait there to be served on Friday?

A. No sir.

Q. I will ask you if on Saturday you did not say to Judge Utz in the presence of Mr. Kelso and the deputy clerk of Floyd County and Mr. Watts—if you did not ask this question of the judge; what is the statute here concerning the militia? And if the Judge didn't say to you, "why do you want to know that?" And if you didn't say, "I never start anything but I end it. I am a great state's rights man."

A. I did not say that, but I will tell you what I did say. What date was that?

Q. On Saturday.

A. I do not know that it occurred on Saturday, but it may have occurred on Saturday again. It is exactly what I said to Judge Utz when he was insisting on taking that property back after it had been delivered to your receiver. I told him then and there not to take anything like that, because if he did he might just as well get ready with his soldiers.

Q. And you did not say that you never started a thing but you went to the end and that you were a great state's rights man?

A. No sir.

Q. Didn't you say that a dozen times during the three or four days you were there?

A. No sir.

Q. Didn't you say to Mr. Kelso that you were a great man for records?

A. I did not.

Q. And relate to him an experience you had had with the U. S. District Court of Kentucky on the record question?

A. I did not.

Q. I will ask you if it is not true that you and Kelso and the Judge of the Circuit Court together arranged that this addition made to the order of February 14th concerning Mr. Kelso should be put upon the record?

A. No sir.

Q. And if you didn't advise it should be done?

A. No sir.

Q. Do you say to this court that in your office you did not say that you would go to Jamaica than come to Indianapolis because you would have to testify against your friend Watts?

A. I did not say that in my office or at any other place, or at any other time, or anything like it.

Q. Do you know the deputy clerk of the Floyd Circuit Court?

A. No sir.

Q. Is it not true that when the sheriff went out to serve it after the petition was signed and filed, that is the petition you signed, you went through from the office of Mr. Kelso and looked over the law with him and took down the statutes governing the law of Indiana that afternoon that the petition was signed by you in his office?

A. No sir I never examined an Indiana statute in his office or any place else that I know of.

Q. I will ask you if in the county clerk's office of Floyd County on Thursday or Friday the 19th or 20th you did not in the presence of Edgar Martin, William Rath, deputy clerks of Floyd County, advise and insist that Mr. Kelso go ahead with this proceeding to have a new receiver appointed?

A. No sir I did not.

Q. Nor said anything in their presence about it nor gave any advice on that subject?

A. No sir.

Q. Of course you were surprised when you were cited to appear in this court for contempt?

A. Yes sir, certainly.

Q. When did you first learn that you had been cited?

A. Sunday night—I mean Saturday night.

Q. By whom?

A. I think it was Mr. Kelso that telephoned.

Q. You wanted them to get together that night?

A. No sir; they telephoned me to come over and I said I could not come at such an hour.

By the Court:

Q. You say they? Who?

A. I think Mr. Kelso. I do not know whose office that was.

Q. Judge Utz and Mr. Kelso wanted to see me they said, I don't remember the words, that there had been a citation come down.

Q. Did Mr. Kelso ask you to act as his attorney in his case?

A. He did not.

Q. The only time he ever asked you to act as his attorney was when he asked you to act as his attorney in this receivership and you refused it?

A. That is correct.

Q. What reason did you give for refusing to act as attorney for the receiver?

A. I had as much business as I could attend to on the other side—

Q. You were attending to business on this side?

A. I was in the interests of a friend and lawyer.

Q. After all the four and a half days that you spent there—all the nights and days, until dark—you did not accomplish very much?

A. No, I certainly did not. I will regret it all my life.

Q. That was because Judge Utz was so mad all the time that you could not get any satisfaction?

A. I did all I could do to get the matter straightened out.

Q. You have filed a written response in this case?

A. Yes sir.

Q. You both deny that you are guilty of contempt in that response and also set up that the orders by this court are void.

By Mr. Fairleigh: That is a record and speaks for itself.

The Court: He has a right to ask him. It is preliminary to something else.

A. Yes.

Q. Part of that was prepared in Indianapolis and part in Louisville?

A. My best impression all prepared here.

Q. Part in ink and part in typewriter?

A. Really I don't know.

The Court adjourned until 2:00 P. M.

THURSDAY, MARCH 12, 1903.

Afternoon Session.

The Court met pursuant to adjournment.

John R. Watts called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Flexner:

Q. Please state your name.

A. John Richard Watts.

Q. Your are a member of the firm of W. W. & J. R. Watts?

A. Yes sir.

Q. And brother of W. W. Watts the defendant here?

A. Yes sir.

Q. Were you present at a conference in the office of Messrs. Sachs on Monday, February 23rd?

A. Yes sir?

Q. Who else was there?

A. In the morning my brother, Mr. Morris Sachs, Mr Dave Sachs, Mr. Kelso, Judge Utz and myself.

Q. Will you please state fully what occurred at this conference on Monday morning, February 23rd?

A. On Monday morning we received a telephone message—

Q. When you say "we" who do you mean?

A. The office; my brother talking at the telephone, to come over to Sachs' office; we didn't go immediately but waited forpossibly an hour or may be an hour and a half, and another tdephone message came and thereupon we went to Messrs. Sachs' office together. When we arrived there, we went intothe back offices and I was introduced to Mr. Kelso and therewas then Mr. Maurice Sachs, Mr. Dave Sachs, Mr Kelso, my brother and myself present.

Q. Was Judge Utz there that morning?

A. Nosir. After the introduction Mr. Dave Sachs spoke to my brother. He had,—there were a number of papers on the table,—and he had some paper in his hand. He said "Will, did you know an order was entered in the Federal Court at Indianapolis on the 17th?" My brother said, "No I did not. "He said, "Well here is the order" and he read it part of it;the first part of it with regard to the appearance etc., and he surrender of the property and he says, "Now there, I say, that settles it."

Q. Who said that?

A. Mr. Dave Sachs. I remember that very distinctly There was some little discussion about the matter as to the entry of that order and then some paper was read, I think it was the basis or the foundation for the citation, or the copy of the citation wherein in the latter part of it my brother was named with Mr. D. A. Sachs and Mr. Kelso as combining together or something of that sort to retake this property from the Federal Court. Upon the reading of that I turned to Mr. Kelso. No I turned to Mr Sachs first, Mr Dave Sachs; I said, "Mr. Dave, has W. W. ever done anything of that nature in this case? Has he ever by any word of his, or by anyaction of his or by anything from which you could draw the inference that he desired the State Court to retain this property as against the United States Court?" Mr. Dave said, "No, he has not." I then turned to Mr. Kelso and I saidthe same thing to Mr. Kelso, and he said, "No, he has not." I said, "Well then, Gentlemen, I don't know, I am the youngest man in the crowd but it does seem to me it is entirelyproper, if W. W. has done nothing up to this time, that he should withdraw from this conference." And I

turned to Mr. Maurice Sachs, who was sitting very near the fire, and I said, "Mr. Maurice, what do you say?" And he said, "Well, John, I don't know; it seems to me we are talking this matter over generally in regard to the responses; I don't see why Will shouldn't stay, for we are simply talking the matter over." "Well," I said, "I yield" and I did yield and we did stay there for sometime. Nothing of any importance that I remember was talked over, at least that I recall now during the morning, but we left the office of the Sachs. Oh, yes, during the morning somebody came back from the front offices and called Mr. Dave Sachs to the telephone; somebody said it was Judge Utz at the telephone; Mr. Dave came back and said he, "Judge Utz will be over here at 3 o'clock. Sometime after that we left. We went to our office and there met—

Q. When you say "we" who do you mean?

A. My brother W. W. and myself. We there met Mr. Harry Jewett. He was over there or he came immediately after we got there. Mr. Jewett said that his brother was engaged in some railroad matters and that he couldn't come up here and make a defense for my brother. We talked there for sometime with him about other matters and then a telephone message came as I remember it again calling us to the Sachs office.

Q. Was that in the afternoon?

A. Yes. This was in the afternoon. I should say considerably after 3 o'clock. No, I couldn't fix the time. We went back there and when we got in I think Mr. Joe Sachs and Mr. Dave and Mr. Maurice and my brother and myself were that time. Whether Mr. Joe was there when we came in I am not certain, but I think he was. I was then introduced for the first time to Judge Utz.

Q. Who was there in the afternoon when you came in?

A. The gentlemen I have mentioned. I think all of them were there, Mr. Joe, Mr. Dave, Mr. Maurice, Judge Utz and Mr. Kelso. I again said in the afternoon turning to Judge Utz: I said, "Judge, this morning I asked Mr. Dave Sachs whether or not my brother by any word of his or by any action of his or by anything from which any of these gentlemen men could draw the inference, whether by anything he was seeking to have the State Court retain the possession of this property or to get it back by any means as against the United States Court."

I was looking directly at Judge Utz because I was extremely interested in the matter and Judge Utz says, "No, he did not; on the contrary he has urged always the getting up of the property." I again said to Judge Utz,—I mean to the party "Well, gentlemen, if that is the situation it seems

to me—really I don't want to insist on it—but it does seem to me the proper thing to do is for W. W. to withdraw from this meeting." And I again turned to Mr. Maurice, and Mr. Maurice urged some such reason as he did in the morning that we were simply talking the matter over to see what could be done and he said he saw no necessity of our withdrawing and we didn't withdraw.

Q. Was anything said that afternoon about affidavits, or in the morning?

A. Oh yes, yes sir; yes in the morning I asked Mr. Kelso and I asked Mr. David Sachs, I said, "Well then, Gentlemen, I would like very much for you to give me affidavits to this effect," and both of them agreed that they would give me affidavits showing that W. W. wasn't Mr. Kelso's attorney and that he had nothing to do with the re-taking of the property, along the line of my questions in the morning. After I asked Judge Utz in the afternoon he said he would give me an affidavit. Sometime after that, I can't undertake to say how long, there was still some discussion about the law of the case. I didn't know anything about the law, only that I heard the conversation. Sometime during that conversation, Mr. Kelso was on a side of the room apart from us in a measure, he said, "Judge Utz let me talk to you a minute;" and Mr. Kelso and Judge Utz went out. In a few moments the doors shook, the lock had caught, the snap had caught and I let them in and Judge Utz came in and sat down and Mr. Kelso walked up and down the floor with his hands in his pockets, just pacing up and down, and finally he said, "Gentlemen, I want to know where the costs are coming from in this case; I am going to have to go to Indianapolis and employ some lawyer and its going to cost a whole lot of money to do it, and now I want to know where the costs are coming from." He said, "I will have to—," as I remember it, he said, "I will have to pay some lawyer up there a thousand dollars to defend me in this matter."

W. W.—I mean Mr. Dave Sachs said to W. W. "Will, Mr. Kelso thinks you ought to raise this money." Will said, "Me?" In quite a surprised tone, and Mr. Dave said, "No, not you as attorney; I don't mean as attorney; I don't think he means that, but he thinks your clients ought to do it." W. W. said, "Why, I can't get my clients to do that; I can't ask my clients for that." Just how that ended up I don't know but right along in there Judge Utz spoke up and said, "Why, Kelso, or Charlie"—I don't know which he called him, "I have got some money in Court with which to pay for the expenses of this thing and he says the expenses are not going to be anything like what you say they will be, or can't be as much as you say;" and there was some little

conversation then and Mr. Kelso put on his coat and he said, "Well, I am going up and telephone for a lawyer, telephone to my lawyer, and I am going up there to-night." He turned as though he was to go and Judge Utz said to him, "why, who are you going to employ? Wait a minute, who are you going to employ?" He said, "Why, he said I am going to telephone up to Ferd Winter." Judge Utz said, "Well, what is he, a Republican or a Democrat?" Mr. Kelso said, "Well now, I think he said, I don't know or I wouldn't be sure of that, but he did say, "That don't matter; he is in that waterworks case with Noble Butler"; and Judge Utz says, "Oh well, if that is the case, go on; that is the man you want to get; go on and telephone to him." And Mr. Kelso left the office. He was gone for a little while and he came back after a few minutes and said he wasn't able to get Mr. Winter at the telephone, and as I remember it in just a few minutes we all separated.

CROSS-EXAMINATION.

QUESTIONS BY JOSEPH B. KEALING, ESQ.

Q. Did you ever get those affidavits?

A. No I did not.

Q. Did you ever get an affidavit from Kelso?

A. No sir.

Q. Did you ever ask him for one?

A. Yes sir.

Q. When?

A. In the morning.

Q. What morning?

A. That morning of the 23rd of February.

Q. Where?

A. In Mr. Sachs' office.

Q. Did you ask him to go and write out an affidavit for you?

A. No sir, I did not.

Q. I mean after that did you ever ask him for an affidavit from that time to this?

A. No sir, I did not.

Q. Why didn't you?

A. Why because the thing transpired on Monday and as I understood it he left on Monday night. I may be mistaken about that, but I had the idea, he said he was going that night.

Q. Is that the reason you didn't ask him for that affidavit?

A. Yes sir.

Q. Because he wasn't there?

A. Yes sir.

Q. Did you ever go to New Albany to see him about it?

A. Never did sir.

Q. You know that all Mr. Sachs had to do in this case was to assist your brother?

A. No I didn't know anything about the case.

Q. You knew Mr. Sachs wasn't in this case as a lawyer didn't you?

A. I didn't know anything about the case.

Q. You didn't?

A. No sir.

Q. Do you mean that your firm was representing the Receiver there and you knew nothing about what was going on.

A. Absolutely nothing. I would like to explain that answer in this way.

Q. All right.

A. That mine and my brother's business, while we are a firm or co-partners, we never undertake to handle each other's affairs and we never enter a case jointly if we can help it.

Q. Well was it your present understanding there that Mr. Sachs had been attorney in that case?

A. I don't think I had any understanding about Mr. Sachs.

Q. Didn't even know that your brother had telephoned him to go over to New Albany to help square himself with the judge?

A. All I know is, sir, that on a day in the latter part of the week previous to this Monday Mr. Sachs came into our office while I was there and he said, "Will, I got a telephone to go to New Albany." I think he said Mr. Kelso telephoned him; I won't be sure of that. He said Judge Utz wants both of us over there; and W. W. said, "Dave, I won't go" and Mr. Dave said, "well, Will, when a man calls for you to come you had better come; you are in contempt of this Court possibly;" and we three talked about it a few minutes, and I had no idea of a contempt of this Court, I thought the contempt was of the New Albany Court and I urged W. W. to go. There is one thing I want to mention that I had overlooked, if I may do it at this point.

Q. Go ahead.

A. While I think of it, of the conversation about coming up here on that Monday. May I put it in here?

Q. Go ahead.

A. On Monday afternoon it seems to me my brother said, it occurred in the morning first, my brother asked Mr. Kelso

what about his coming up here and Mr. Kelso said that he had seen Mr. Hester upon the street; as I remember it he said he had gotten those papers from Mr. Hester that he had there with him and he said that Judge Anderson was hot after W. W., and Kelso said, "If I were you I wouldn't go;" then in the afternoon by brother said, "Judge Utz what do you think about my going up there?" He had asked Mr. Kelso in the morning. Judge Utz says, "Well, I wouldn't go" and W. W. says, "Well, Judge, if you say for me not to go I don't know whether I will go or not; I am inclined not to go." And I said, "Now, if you will let me interrupt again Gentlemen, I don't take that position; I think that if W. W. is in contempt of any forum on earth it is his place to be there," and we left there with the intention of coming up here. I beg pardon for interrupting.

Q. All right, go back then; did you know that your brother had been cited for contempt of the Court at New Albany?

A. Not as a citation I didn't.

Q. Answer that question.

Preceding question read by the stenographer.

A. I am doing it the best I can. I understood he was in contempt of that Court but I didn't know he had been cited.

Q. Did you know he was in trouble at New Albany?

A. Yes, sir.

Q. Do you mean to say to the Court that he didn't tell you that he had taken Mr. Sachs over there to help him out?

A. Yes, sir; I mean to say that.

Q. Did you know he had been to Indianapolis before the Federal Court?

A. I knew that; yes sir.

Q. Did you know what he was here for?

A. I think I did. I saw the—

Q. Just answer the question; what was he here for?

A. As I understood it he was here to present some petition to this Judge to avoid the clash of jurisdiction.

Q. Then you knew there was a clash of jurisdiction?

A. No I did not.

Q. Why do you say that?

A. Because I knew he had come up to avoid it.

Q. Didn't you answer that he came up here to present some phase of this case to prevent a clash of jurisdiction?

A. Yes sir.

Q. Where did you get that information?

A. From the pleadings as I heard him dictating part of them in the office and from the newspaper.

Q. And he was trying to prevent a clash of jurisdiction. Did you ask him after he came back what the result of his visit was?

A. I don't believe I could say positively whether I did or not, but I am almost sure I did not.

Q. He didn't tell you?

A. No sir.

Q. You office together?

A. Yes sir, we office together; we don't office together either; his office and mine are separate.

Q. Are you partners?

A. Yes sir.

Q. Well you didn't know then, that he was a good deal troubled and grieved from his actions or looks after he came back from Indianapolis, did you?

A. Yes I did on that day that he came back; I only know it this way, if I may say it.

Q. I don't care how you knew it. Did you know it?

A. I knew it simply from our bookkeeper who told me that W. W. was at his hotel sick on Thursday afternoon.

Q. Did you see him that afternoon?

A. No sir, I did not.

Q. When did you next see him?

A. I don't know now when I did see him.

Q. Did you know up to the time he was cited for contempt in this Court on Saturday night or during that week that he was over at New Albany, didn't you know that he apparently was in trouble with the Court?

A. Which Court?

Q. Either Court or both?

A. I knew on the day that Mr. David Sachs came to our office and that is the first and the only information I had of it as I remember it now, that there was either a contempt proceeding or W. W. was afraid of a contempt proceeding in the New Albany Court.

Q. What day was that?

A. I couldn't undertake to tell you.

Q. How soon after he came back from Indianapolis?

A. I don't know just when that was.

Q. He came back that Tuesday night?

A. Yes sir.

Q. How soon after Tuesday night the 17th of February was it?

A. I can't place the date, sir.

Q. He was in the office on the 18th after he returned from Indianapolis, wasn't he?

A. I couldn't give you a positive answer on that.

Q. When during that week then did you first see him?

A. I don't believe, sir, I could give you an answer; I don't know.

Q. Did you see him that week?

A. Yes sir.

Q. When you did see him could you tell from his appearance or anything he said to you that he was in trouble or appeared to be in trouble with the Court?

A. Now to give you—

By the Court.

Q. Well answer the question.

A. I can't give it Judge—

Q. If you can't answer, say so.

A. I can't answer it except in my own way if you will allow me.

The Court: Read the question.

Q. Question read by the reporter as follows: "When you did see him could you tell from his appearance or anything he said to you that he was in trouble or appeared to be in trouble with the Court?"

A. I want to do it, Judge—

Mr. Kealing: I will withdraw that question.

Q. When you saw him that week did anything in his appearance indicate to you that he was in some kind of trouble. Now answer that yes or no.

A. Yes.

Q. Very well.

A. Now I want to offer an explanation with that.

Mr. Kealing: We don't need the explanation now.

The witness: I want to offer one.

Mr. Fairleigh: He has got the right to explain it.

Mr. Kealing: Go ahead.

The Witness: I don't know where I got the information but I did know—

Q. I haven't ask you about information. I am asking you about his appearance. I haven't ask you anything about your information.

A. I can only explain it in my own manner. I am doing the best I can.

Q. Now from anything he said to you that week did you know that he was in trouble with either the court at Indianapolis or the court at New Albany?

A. Nothing except that morning when Dave Sachs and he and I had a little conference there.

Q. What morning was that?

A. I don't know.

Q. Was that before Sunday?

A. Yes sir.

Q. Was that before he was cited for contempt in this court, the United States Court?

A. I don't know when the citation issued from here. It was before I knew about the citation.

Q. What was that conference about that you and he and Sachs had?

A. Going to Judge Utz'.

Q. What was said at that conference between you, your brother and Sachs before you went to Judge Utz'—before they went to Judge Utz.

A. Mr. Dave Sachs came into the office, I think he said Mr. Kelso had telephoned to him to come over. My brother said, "Well, I don't want to go;" Mr. Dave said, "Well Will, you know when a man telephones for you you had better come; I think you had better go over there." And W. W. turned to me and asked me some question and talked generally about it and finally concluded that it was a matter of policy for him to go simply to conciliate the matter.

Q. Did he go?

A. I don't know except he quit the office.

Q. Now you may tell the Court when your brother came back from Indianapolis on Tuesday night the 17th, the following day, or any day thereafter prior to Saturday when he was cited for contempt, whether he told you what had transpired at Indianapolis about his promising to advise that those goods be turned over.

A. I frankly say I don't know.

Q. Then you don't know whether he told you or not.

A. I can't say whether he told me or when he told me; I don't know where I got that information.

Q. Did you know on Saturday the 21st of February—that was the day that you heard of these contempt proceedings in Indianapolis—prior to that time did you know it?

A. I beg your pardon. Let me see. You say Saturday?

Q. I understood you say you heard of it Saturday night?

A. No I didn't say that. Monday was the first I heard of it.

Q. Prior to Monday—prior to Monday, the day that you heard that he was cited for contempt of the United States Court, did you know from any source what had transpired in Judge Anderson's Court between the Court and your brother on February the 17th?

A. I think I had known generally something of it.

Q. Who told you?

A. I think our bookkeeper told me of it.

Q. Had your brother said anything to you on the subject?

A. I couldn't say whether he did or not; but I don't remember anything he said to me on that subject.

Q. Do you mean to say then that during that whole week that your brother told you nothing of his troubles either with this Court or the New Albany Court?

A. No I don't mean to say that.

Q. What do you mean to say then?

A. I mean to say I never knew anything of the trouble as to the contempt proceedings in this Court until Monday; from some source, I don't know where I got the information, I understood he came home sick and humiliated and had gone to bed from his appearance before this Court here, but sometime before—

Q. (Interrupting) Did you understand that from him?

A. Wait a minute; I did know of either some contempt proceeding or some proceeding that was feared for contempt in Judge Utz's Court on the morning when we three had the conference that I spoke about.

Q. When did he go to bed after he came back from Indianapolis?

A. The only thing I know of it was that day the bookkeeper told me and I wouldn't like to say the exact date.

Q. Did you go to see him?

A. No sir.

Q. Didn't see him at all while he was in bed there?

A. No sir.

Q. Then you knew nothing from what your brother told you about his troubles in New Albany and about his getting Mr. David Sachs to go to New Albany to square himself with the Court because the Court was mad at him? You knew nothing about it?

A. Yes, I did the morning Dave Sachs came over there.

Q. I mean prior to that.

A. No sir.

Q. He didn't tell you?

A. No sir.

Q. Not a word?

A. No sir. I don't know that I positively had seen my brother—

Q. (Interrupting) At this conference you asked the question as to whether or not your brother—

The Witness: (Interrupting) I would like to explain that, Judge.

Mr. Fairleigh: He has the right to explain his answer.

The Court: His testimony consists mostly in explanations.

Mr. Kealing: If the Court please, he said he didn't see him.

The Court: If Counsel on the other side want to draw that out they may do it but this witness explaining instead of answering and explaining every answer will have to stop.

Mr. Fairleigh: Your Honor knows how difficult it is to state the facts just as they are unless an opportunity is given for explanation.

The Court: I do not want any discussion about it. I understand the rule is to answer the question first, and not

only that but Counsel have the right to re-examine or cross-examine. I don't want any more of these voluntary explanations.

Q. Now, Mr. Watts, I understand the first you knew of these contempt proceedings at Indianapolis was on Monday?

A. Yes sir.

Q. Had you seen your brother on Sunday?

A. No sir.

Q. Before the Monday you heard of it?

A. No sir.

Q. Where was your brother on Sunday and Monday? You didn't see him on Sunday? Where was he on Saturday prior to that do you know?

A. No I do not.

Q. You knew he wasn't at the office didn't you?

A. No I did not.

Q. Why?

A. Why, because I am in the court house a great part of my time. I am a busy man.

Q. How late do you hold court over at Louisville in the evening?

A. It depends entirely on the case you have.

Q. Court adjourns at five o'clock?

A. Yes sir.

Q. Well, if your brother was over at New Albany three or four days until after dark didn't you think it a little strange that he didn't appear at the office?

A. That didn't present a strange situation to me.

Q. You didn't stay at the court house until dark on Friday and Saturday?

A. No, sir.

Q. And you thought it was nothing strange for him to be there?

A. I didn't know he was there.

Q. You know it now don't you?

A. I know it now.

Q. You didn't know from him that he was there?

A. I didn't know until now that he was there; nothing called it to my attention.

Q. On Monday you went to Sachs' office?

A. Yes sir.

Q. And you asked Mr. Kelso the question, you asked first Mr. Sachs the question as to whether your brother had advised or done anything to pursue this receivership further in the State Court? That is practically what you ask is it?

A. That is practically the effect of it.

Q. Did you ask that same question of Mr. Kelso concerning Mr. Sachs?

A. No sir.

Q. Why didn't you?

A. Why I was only with my brother.

Q. Why did you suggest at that conference that your brother withdraw from it and leave Sachs in the conference?

A. Why Mr. Sachs had his several brothers there and I was only with W. W.

Q. You were appearing there with W. W.?

A. I was appearing there as his brother.

Q. But you tried to withdraw from the conference; that is, you suggested it?

A. I thought it was wise, and still think so.

Q. And the only reason you staid there was that one of the Sachs said that they were only discussing this matter?

A. Yes, he was the oldest man in the party.

Q. And you thought it was wise to withdraw later on in the evening?

A. Yes sir.

Q. Did you ask Judge Utz why he was over there?

A. No, I did not.

Q. Did you think it a little strange that the Judge of the Circuit Court should be over in the office holding a consultation with these other attorneys?

A. Well I don't know that that occurred to me.

Q. Did Utz say why he was there?

A. Not to me.

Q. Didn't hear him say why?

A. No sir.

Q. Who was it, if any one, said in that conversation that he would rather go to Jamaica than come to Indianapolis?

A. I never heard that expression.

Q. By anybody?

A. Not until I got up here.

Q. I will ask you if David Sachs didn't say that he would rather go to Jamaica than to go to Indianapolis because he would have to testify against your brother?

A. He did not in my presence.

Q. You asked Judge Utz then and Judge Utz told you he would give you an affidavit too?

A. Yes sir.

Q. Did you ever ask Judge Utz for that affidavit?

A. I did not, sir.

Q. Why?

A. Because I expected to come up here with W. W. and I thought both Judge Utz and Mr. Kelso would be here.

Q. Did you have Judge Utz subpoenaed as a witness in this case on this contempt proceeding?

A. No sir.

Q. If you knew that is what he said why didn't you subpoena him?

A. I didn't issue any subpoenas in the case.

Q. Why didn't you have him subpoenaed for you?

A. Because I am not an attorney in the case.

Q. All the reason you didn't get Kelso's affidavit was because you didn't think Kelso was there?

A. No.

Q. That is what you said.

A. I will explain that.

Q. Is it the reason you didn't get Kelso's affidavit was because he left for Indianapolis?

A. Yes; and I thought Judge Utz would be here too.

Q. You knew for the last week that Judge Utz has not been at Indianapolis, didn't you?

A. This last week?

Q. Yes.

A. I don't know where he has been the last two weeks. I know I was up here sometime ago and he was here. I will explain in addition the reason I didn't ask Mr. Utz and Mr. Kelso was because I read their testimony.

Q. Where?

A. Taken here on Mr. Kelso's trial.

Q. Where did you read it? When did you read it?

A. Part of it here and part of it on the train.

Q. From the newspapers?

A. No sir; from the stenographic report.

Q. You had a stenographic copy made of this testimony before this case came up?

A. I got a copy; yes sir.

Q. Did you learn at any time prior to the Monday that you met in Sachs' office that Mr. Sachs was acting as attorney for Mr. Kelso?

A. I didn't even know it then, and I hadn't learned it prior to that time and I never did learn that until these proceedings were on.

Q. And I understand you didn't then know that your brother was acting as attorney for the Receiver?

A. No, I don't say that.

Q. Oh, you did know that?

A. I didn't know he was acting as attorney for the Receiver but understood he was.

Q. When did you learn that?

A. I don't know that; I think the same day that the suit was brought down in New Albany.

Re-examination.

Questions by Mr. Flexner.

Q. You have said upon cross-examination that you didn't see your brother while he was sick, or when he was sick. What sickness do you refer to?

A. He was sick twice. On one afternoon, Mr. Fairleigh, he was sick, and on the same night—that was Monday night —of our conference with Mr. Kelso and Judge Utz and the Sachs he was sick then and sick for sometime afterwards.

Q. In this latter sickness did you see him at all?

A. Yes sir?

Q. So that your answer refers to the afternoon of the week before?

A. Only to that one afternoon.

Q. You say that you do not see your brother sometimes for days at a time; that it was not unusual for you not to see your brother for a day or two?

A. No sir, that was not unusual.

Q. Why was it not unusual?

A. Because, Sir, our practice is almost entirely separate and distinct, both of us being very busy, and we have made it a rule not to interfere with each other's business in the office.

By Mr. Kealing:

Q. But if you have a case that is very important, involving possibly a citation before a Court for contempt on the part of your brother, isn't that important enough to have a consultation on in your firm?

A. This is the only case of that sort that has ever occurred in the office.

Q. Sir? I didn't understand your answer.

A. Read him my answer.

Q. Read him the answer.

The answer to the preceding question was read by the reporter.

Q. But where there is trouble as it now turns out, that you now know, respecting the clash of jurisdiction between the two courts—

Mr. Fairleigh: I submit that is argument your Honor.

Mr. Kealing: I haven't finished my question.

Q. (Continuing) As there was in the M. Zier case during the days from February 17th to February 22nd, is it not customary on matters of such importance to have consultations?

A. Looking back upon it now I think it is, but it evidently was not in this case; and we have had other cases of a similar nature, the one that the Judge referred to, the Etheridge case, I didn't know anything about.

Q. How long ago was that?

A. I don't know.

Q. You said you knew nothing about it. How long ago was it? Perhaps you were not in the firm then?

A. Oh yes.

Q. How long ago was it?

A. Was what?

Q. This Etheridge case?

A. I don't know, sir. The Judge referred to it here from the stand.

Q. Do you remember anything about the case?

A. Not a thing.

Q. Didn't you say you was in the firm when that case was in the firm?

A. I thought the case read my name—

Q. I am asking you, Sir, if your recollection is you were in the firm when that case was there?

A. I imagine I was.

Q. Do you recollect anything of it?

A. No sir.

By Mr. Smith:

Q. Mr. Watts in the conference at Mr. Sachs' office on Monday, did Judge Utz—Monday afternoon I refer to—did Judge Utz say anything with reference to if Mr. Sachs and Mr. Watts wouldn't go to Indianapolis that Mr. Hester could fix it up or if he couldn't see Hester he could get Stotsenberg to see Hester and it could be arranged without any further proceedings in the United States Court at Indianapolis?

A. Yes sir; there was a conversation of that sort. A number of suggestions were made for the purpose of getting a settlement of some sort and somebody suggested to Judge Utz that he see Hester. Judge Utz says, "No, I will have Stotsenberg see Mr. Hester and I think through him we can get some sort of a settlement.

By Mr. Kealing:

Q. You spoke a moment ago of talk of hiring, Kelso hiring an attorney at Indianapolis. Did you hear Mr. Sachs say to Mr. Kelso that if he was in his place he wouldn't emply Mr. Newberger because he wasn't the right kind of a man to present such a case?

A. I never heard Mr. Newberger's name mentioned in the conference.

Witness excused.

Maurice A. Sachs, a witness called on behalf of the defendants being first duly sworn testified as follows:

Direct examination. Questions by Mr. Smith.

Q. Give your name, Mr. Sachs.

A. Maurice A. Sachs.

Q. Are you the Maurice A. Sachs of M. A., D. A. & J. D. Sachs attorneys practicing law in Louisville?

A. Yes sir.

Q. You are the older brother of these two gentlemen?

A. Yes sir.

Q. What is your age, Mr. Sachs?

A. Fifty-six next month.

Q. How long have you been practicing law?

A. My law school diploma which was my license is dated 1866.

Q. You graduated in Louisville then?

A. Yes sir.

Q. Been practicing law there ever since?

A. Ever since.

Q. Mr. Sachs were you present in your office on Monday the 23rd of February in the forenoon when Mr. Kelso came over there to see your brother D. A. Sachs?

A. Yes sir.

Q. Did you hear any conversation between them on that occasion? I speak of a morning hour now.

A. I came into the back room of our offices and when I came in I found my brother was there and I think that Mr. Watts was there, Mr. W. W. Watts and his brother, and I was introduced to Mr. Kelso; I had never met him before; and I took a seat there at the table just to listen, or to see or to hear what was going on, and I had not been invited in there at all.

Q. Up to that time had you had any connection with these proceedings in the Zier cases, either the bankrupt or the state proceeding?

A. Personally none.

Q. Had you known anything of the proceedings at all?

A. Yes sir.

Q. What was the extent of your knowledge on that Monday?

A. A brewery firm at Louisville, Walters, had a contract with the Zier concern before this failure, before the Court proceedings at New Albany. The Walters at Louisville applied to my youngest brother—there are three of us—to look into that matter; a contract for boilers that the Zier Company were building for them was unfinished, and I knew that that matter was in the office. Personally I had no connection with it. I only knew that from the fact that my youngest brotder often talks to me about matters in his hands.

Q. Up to that time had you any knowledge of the conflict of jurisdiction that had arisen between the two courts, the Federal and the State Court?

A. No sir.

Q. Had you been called into consultation in regard to any such conflict at all up to then?

A. Never and I was never called into any consultation about it. I happened to come it.

Q. Had you been consulting in regard to any complications that Mr. W. W. Watts had supposed he was about to get into or was in?

A. No sir.

Q. Now at the time you went into the back office there did you hear any conversation as between Mr. Kelso and your brother D. A. Sachs? Perhaps you had better go on and state in your own way what occurred there that morning, Mr. Sachs, if you will remember.

A. I will try to tell you but I must say this, that I done more thinking, and wasn't listening part of the time as to what they were talking about. I will do the best I can. My recollection is I came in and I saw some gentlemen there, that is those I have named, and I took a seat at the table, and my brother had a paper, had an order made by this court at some date prior to that, and handed it to me, and I read it, and I then asked the gentlemen to tell me something about this matter. I may say that it was all practically new to me up to that time; and my brother told me; I can't tell you just—I am only telling you that between them they gave me a sort of a general idea about this Zier concern having become insolvent and I had to take up the time simply to give me a general idea of what has been developed here at this trial.

Q. An outline of the record?

A. An outline.

Q. Well?

A. Well, when they got through with all that I will admit I did not appreciate the seriousness of the thing; I turned around and I said: "Will, always deal fairly with courts; if you will go up to Indianapolis and see the judge of that court and will tell him what you tried to make clear here to me, turn this property over to him, to his court, why I think although you may be technically guilty of some offense, the Judge if he wants to do right will take cognizance of that;" and I talked to him as I was so much older than he; I considered myself a pretty old man; and I talked to them in that way; and that was practically all I had to do with it.

Q. Did you hear your brother, D. A. Sachs make any statement at that time in regard to what he thought ought to be done or what was the result or effect of that order?

A. Oh yes sir; I will say that he did say when I said "Why this order ended things; this is plain," why he said, "Well there, that is what I told you." Turning to Kelso or

some one sitting there, I thought it was Mr. Kelso. There was another matter developed in that meeting that I just happened to think about.

Q. Was there anything said there that morning in regard to anybody having become responsible for the costs of the Receivership accepted by Mr. Kelso?

A. There was something said about Mr. Watts ought to do that, or ought to furnish some money to help Mr. Kelso.

Q. Who said that?

A. Mr. Kelso is my recollection.

Q. Was there anything said about D. A. Sachs at any time that day?

A. Nothing of that sort said and no inference of that kind.

Q. Were you in there in the afternoon when Judge Utz arrived?

A. I generally get back at half past three and I came in shortly after I came back to the office.

Q. Who was there when you got back there in the afternoon?

A. These same parties that were in there in the morning it seems to me, except that Judge Utz had arrived in the meantime. My best recollection is now that it was developed there in the morning that Judge Utz desired to be present and that in the afternoon when I came back from lunch—I generally get in about half past two—and I walked back and found he was there; I was there introduced to him, I remember that; I never had seen the judge before.

Q. Now did you hear any conversation that afternoon between Judge Utz and Mr. D. A. Sachs and Mr. Watts, W. W. Watts, as to whether or not he desired them to attend, or whether they intended to come to this Court at Indianapolis in reponse to these citations?

A. Yes I did hear a discussion of that question.

Q. What was that?

A. Well now, when I say I heard it I didn't pay close enough attention to that to be able to tell you just what was said. Let me think a minute. Well, I don't want to guess about it. I wouldn't like to make a statement unless I remember it.

Q. Did you hear your brother say anything to the effect that he would rather go to Jamaica, Texas or California, then to give evidence against his friend Watts?

A. I am very positive that no such statement as that was made.

Q. Did you hear any conversation on the part of Judge Utz and these gentlemen in which some suggestion was made that Mr. Hester be seen, and Judge Utz suggested

that he would see Mr. Stotsenberg to avoid the necessity of their appearing here.

A. In the afternoon. In the afternoon, towards the close of that afternoon interview, Judge Utz was sitting at the table and Mr. Kelso was walking up and down the other side, as if it were there (indicating a position in the Court room) a question came up about money matters. Mr. Watts had been called in and when it was put to him that he was to raise money or ought to do it, he looked surprised; and there was some running conversation about it; Judge Utz was sitting at the table; "Oh, well, he says, it is not going to require so much money." Mr. Kelso thought it was going to be very expensive and the Judge said that he had some money in Court. I am not going to give you the figures because I can't; I wasn't noticing the figures; he had some money in Court in this matter that could be appropriated to that purpose, and then in that connection it was mentioned that they were to see Mr. Hester, I believe, who was supposed to be the opposing counsel, and that they would talk this matter over and see what could be done towards settling it, or something of that kind; I can't tell you definitely.

Q. You can't remember that conversation definitely enough to give it?

A. No.

Q. Or undertake to give it?

A. I will say that that was late in the evening, and then Mr. Kelso said he would go to the telephone, long distance telephone, and telephone up here to Indianapolis to—I think he mentioned the name that I heard mentioned here, a gentleman don't know, Mr. Ferd Winter, and he came back shortly afterwards and said either that he couldn't get him or that he couldn't secure his services, and that finally ended it. He then went off.

Q. That is all you know about this conference is it, Mr. Maurice.

A. Yes sir.

By Mr. Fairleigh: I wish you would say to this Court whether during these conferences on the 23rd of February you heard Mr. John R. Watts ask Mr. D. A. Watts, Mr. Kelso or Judge Utz, with reference to his brother's connection, as to whether he did anything or advised anything in opposition to the turning over of this property?

A. Yes sir.

Q. What responses did those gentlemen make to that inquiry?

A. I couldn't tell you what the answers were but I did hear Johnny Watts speak about getting affidavits to show that his brother had taken no—or done nothing towards interfering with the orders of this Court.

Cross-examination by Mr. LaFollette:

Q. Mr. Sachs are your offices in Louisville adjacent rooms, you and your brother's?

A. They are peculiarly divided, Mr. LaFollette; there are four rooms that were originally intended for two offices; there is quite an intervening space between the front and back part of the house. It is a long business.

Q. During the week preceding the Monday at which you heard the conference you have related, or at which you were present did you hear anything about the M. Zier & Company concern and its history in the Court at Indianapolis and at New Albany?

A. Nothing of sufficient importance to make me now recollect it at all, only about this Walters controversy; nothing connected with this matter; nothing.

Q. Did you know that W. W. Watts had had occasion to call your brother to go with him over to the Floyd Circuit Court?

A. Oh yes. Yes; now wait a minute. Let us see. What was the date of the proceedings here?

Q. On Monday and Tuesday the 16th and 17th of February here.

A. The 16th and 17th of February. It was upon the 17th of February that this Court made an order, the order that was finally sent down, the one that I looked at Monday? That was the 17th wasn't it? And this Monday following was the—

Mr. Fairleigh: 23rd.

A. (Continuing) 23rd. Yes I did know that Mr. Watts had called on my brother to help him out of his trouble some.

Q. Did you know that he came to New Albany on Wednesday afternoon or morning, anyhow Wednesday sometime?

A. Who?

Q. Mr. Sachs, your brother, in company with Mr. Watts.

A. I didn't know anything about it.

Q. You didn't know that?

A. No sir.

Q. Did you know he was also at New Albany on Thursday the day following?

A. No sir I did not.

Q. And Friday and Saturday?

A. No sir I did not. That is, I didn't know anything about it prior to Monday.

Q. Prior to Monday. During the week was there no question came up in your office about the law governing the matter of rights of courts as to jurisdiction?

A. No sir, no.

Q. Was that question discussed in your office?

A. Well I won't say that either, but not with me to such an extent as would have made any impression on my mind.

Q. There was no such examination of authorities or discussion of the law in your offices during that week that brought to your knowledge the fact that there was a conflict of jurisdiction between the Floyd Circuit and the United States District Courts?

A. I remember only one instance; that sometime during that week my brother Dave spoke to me about the question of jurisdiction I believe between the—jurisdiction as between the United States Courts in bankruptcy and the State Courts where there was a proceeding pending in the State Court; well, hypothetically this case you may say, and I remember this: that I picked up Loveland, the Clerk of the United State Court at Cincinnati's book on that subject, Loveland's Bankruptcy, and we had been along that line in a case that we had that came up early under the act of 1898, when the whole thing was new, we were always mystified about it, and I remember now I handed him that book, and I called his attention to a foot-note where there are cases cited a list that deep (indicating) on either side of the question.

Q. Didn't you learn then that the reason why he was examining those authorities and talking about the law to you was because there was a conflict between the Floyd Circuit and the United States District Court?

A. Well I couldn't say that; I told you it was put to me as a sort of a hypothetical proposition, and I didn't know what it had application to.

Q. Didn't you by reason of that talk about the law learn that W. W. Watts had been at Indianapolis in an effort to convince the Court here that the Floyd Circuit Court had jurisdiction in the M. Zier case and the order which had been made appointing Mr. Connor a Receiver should not be enforced?

A. Why no, I can't say that I knew anything about it or heard enough to make me pay any attention to it. I don't like to—

Q. (Interrupting). I am asking what you know about it?

A. I will tell you. I will tell you all I know about it.

Q. Now from each day, Wednesday, Thursday, Friday and Saturday, didn't you on any of those days learn that that question was on there at New Albany and that that was why your brother was going over there every day?

A. I didn't know he was going over every day.

Q. Didn't you?

A. No I did not. One day, one day it seems to me that I knew that he was going to New Albany; I don't like to be making long winded explanations but I can't help myself.

By the Court:

Q. I don't know why you can't, Mr. Sachs. Why can't you answer the questions without explanations?

A. I will try my best. I was going to suggest to your Honor the reason why I knew so little about it is that our business is divided up.

By Mr. LaFollette:

Q. Well if you didn't know it that ends it; I am asking if you didn't learn it in the course of the week and if you didn't you didn't. Now on Monday you did hear more definitely about the matter, didn't you?

A. Oh, yes.

Q. You say you were not called into the conference? You walked into it?

A. That is my best recollection of it.

Q. But when you walked into this room in which these gentlemen were engaged in conversation you stopped there, did you?

A. Why certainly I took a seat at the table. I remember that.

Q. And after you did take a seat at the table what did you learn about the questions that were being discussed? How soon did you learn about it and what did you learn?

A. Well I asked for information as to the matter to get the facts as best I could.

Q. What information did you get?

A. I wanted to know what they were talking about?

Q. What did you learn?

A. Practically what has been told here in various shapes.

Q. Did you learn there that Mr. Watts had come to Indianapolis in connection with Henry Jewett on Monday the 16th of February to argue the proposition of the jurisdiction of the courts and endeavor to convice this court that the order that had been made directing the property of M. Zier & Company to be placed in the hands of a receiver in bankruptcy should not be enforced because the Floyd Circuit Court had had jurisdiction of it prior to such order?

A. (To the reporter: Will you read that question?)

The question was read.

A. No I didn't learn what you stated there in that question.

Q. Well did you learn that Mr. Watts had been at Indianapolis at all.

A. Yes sir.

Q. Did you learn that immediately following that he and Henry Jewett had gone to the Floyd Circuit Court saying that they intended to turn over the property of M. Zier & Company to Mr. Connor, Receiver in bankruptcy?

A. I heard that Mr. Watts and Mr. Jewett had gone to the Floyd Circuit Court but exactly for what I can't say.

Q. Did you hear that there was some claim that they had by some action placed themselves in contempt of the Floyd Circuit Court?

A. I think Mr. LaFollette in explanation of that order of this Court—

Mr. LaFollette: You can answer the question. Read the question to him.

The question was read.

A. Oh yes sir.

Q. And did you also learn that they had been cited for contempt in this Court?

A. Yes sir.

Q. Was the matter explained to you so that you gentlemen —were they in a discussion of the law bearing upon the case at that time?

A. I can't tell you that; I don't remember that.

Q. Is it a fact that during that Monday a considerable part of the conversation that was had in your office was a discussion of the law bearing upon the question of jurisdiction?

A. I should say No.

Q. How long did the conference of the morning last?

A. I came in there about half past ten o'clock; I think I was in there an hour or so.

Q. Well, were you in there as long as the meeting was in progress as a conference?

A. I wouldn't like to say sure because I don't remember that; I may have gone out before some of them left.

Q. Was there another meeting held in the afternoon of the same parties substantially?

A. With the addition of Judge Utz.

Q. Were you present when Judge Utz came in?

A. I can't say.

Q. But you do remember that you were a meeting at which Judge Utz was also present?

A. Sure, sure.

Q. You remember that Mr. Kelso was present?

A. Certainly.

Q. Had you learned in the meantime that Mr. Kelso had been appointed Receiver in the State Court and had taken charge of the M. Zier and Company property by means of a writ issued to the sheriff of Floyd County?

A. Yes sir, there was—certainly I must have been told about that.

Q. Did you know prior to the action of the sheriff in taking the property that your brother D. A. Sachs had appeared in the Floyd Circuit Court or at least before the Judge of the Floyd Circuit Court, and either before the Judge or at Mr. Kelso's office made an affidavit in which he appeared as the attorney for the United States Tube Company and had it filed before the Judge?

A. I did not.

Q. Had your brother told you nothing about that?

A. No sir.

Q. During the week?

A. No sir.

Q. And didn't he on that Monday tell you that he had taken that action?

A. No sir.

Q. Didn't he tell you that he had that far connected himself with the proceeding.

A. Not that I can remember, Sir.

Q. Was there anything said after Judge Utz came when Mr. Kelso was present about your brother D A. Sachs being the attorney for Mr. Kelso as Receiver?

A. I knew that he had not been from the conversation that took place there.

Q. How is that?

A. I knew that he had not been from the conversation that took place there.

Q. What was it that took place that gave you such knowledge as that?

A. There was no demand made upon him that indicated that; no intimation of that sort; I know it more from the absence of anything than from what was actually said.

Q. You think you know it from what was not said?

A. Precisely; from the attitude of the parties; from the way they were talking.

Q. Well, didn't you know that your brother D. A. Sachs had taken the position there before the Floyd Circuit Court that that Court, the State Court, had jurisdiction as against the Bankruptcy Court of the M. Zier property?

A. You mean when?

Q. The week prior to the meeting on Monday.

A. Oh no.

Q. You didn't know that?

A. I knew nothing at all about it; at least if I did I have forgotton.

Q. Was there anything said in the course of that meeting on Monday either by Mr. Kelso or Judge Utz to Mr. Watts

or Mr. Sachs, D. A. Sachs, about the proceedings that had taken place the week before and about his advice in the matter?

A. Yes sir, there was some talk about that and he corrected that two or three times saying, "I never undertook to advise anybody."

Q. Your brother said that?

A. Yes sir.

Q. Well what was there that had been said that induced your brother to say that he had not made any effort to advise them?

A. They were speaking about some of these late proceedings.

The Court: I can't hear you.

Preceding question and answer read by the reporter.

Q. Hadn't they said to him that they had acted under his advice as the reason why he was then undertaking to say that he hadn't advised them at all?

A. No.

Q. Well you do say that you heard him say that he didn't advise them, didn't you?

A. There was some questions came up there possibly, I can't tell you exactly the connection; I was interested in asking that question myself, and I heard him make the correction; I can't explain it exactly; I will try to do it if I can.

By the Court:

Q. What was it you heard him say?

A. I heard him say that he hadn't been advising with these people in answer to my question; I asked the question, I being the older. Now that is my recollection. My recollection is very fair about it. I asked him if he had been advising with these people and his answer was no; I was asking questions, and expressed opinions once in a while or something of that sort.

By Mr. La Follette:

Q. That is the way he answered you?

A. Yes sir.

Q. After he had been asked questions?

A. He had given opinions about matters.

Q. Did he explain to you what his opinions were as given over there, when he was giving opinions?

A. I wouldn't undertake to say that for I can't remember it.

Q. Were you endeavoring to learn from your brother D. A. Sachs what position he had assumed over there in the State Court?

A. No sir.

Q. Well then why were you asking about what attitude he had assumed in it?

A. Just to get general information.

Q. Was the question of what kind of a response or responses were to be made in this court under consideration?

A. They were considering that; they were talking generally about that.

Q. That was what was before the meeting wasn't it?

A. And I right from the start I said just what I said when I started out here to-day; I said "Gentlemen, go and make your explanation; you don't need any responses, go and see the Court."

The Court: You were not asked for that. Confine yourself to the question.

Q. Had you learned then that your brother and W. W. Watts were each included in an order to show cause in this court why they should not be punished for contempt?

A. On that Monday?

Q. Yes. Did you learn that?

A. I don't know; I expect I did.

By the Court:

Q. You don't know really what advice you gave more than you have stated?

A. As you have asked me, I can only wind up as I began; I considered myself an older man than all of them. I didn't consider anything serious in it. I said, "Go and tell the Judge of the Court candidly what has been done; turn over the property and do right and the Judge will do right."

By Mr. Kealing:

Q. You don't know why they didn't take your advice?

A. I cannot tell you.

Q. You know that they didn't take your advice?

A. This was after all the trouble had been done, if I am right.

Q. Except the coming back here and answering the citation?

A. Yes sir.

By the Court:

Q. That was the time you gave the advice? You told them to come up here and turn over the property and do what was right? You know now that they didn't do it?

A. Yes sir.

Witness excused.

Jos. G. Sachs, called for the defendants, being duly sworn and examined by Mr. Smith, testified as follows:

Q. Are you a member of the firm of M. A., D. A. and J. G. Sachs?

A. Yes, sir.

Q. Practicing law in Louisville?

A. Yes, sir.

Q. How long have you been engaged in the practice?

A. Since 1882.

Q. What aged man are you?

A. Forty-one last October.

Q. Were you over at New Albany upon Friday, February 20th in the afternoon?

A. I was over there on Friday afternoon in February but I do not like to be positive about the 20th. If you say it was the 20th I will believe it.

Q. I call your attention to the fact that it was the Friday when your brother D. A. Sachs and Mr. Watts and Judge Utz and Mr. Kelso were in Judge Utz private chambers there?

A. I was over there the Friday that they were there.

Q. What time in the afternoon did you get there?

A. I could not tell you but between three and half-past three.

Q. What was your business over there that day?

A. I went over to see about what could be done about getting a boiler contract finished for the Walters, which the Receiver had undertaken to carry out by the order of Judge Utz.

Q. Had you been over there before in regard to that same matter?

A. I was there at the meeting of the creditors in Judge Utz Court.

Q. You were there as the representative of this brewery concern in your city?

A. Well, yes and Mr. Hester was assisting me.

Q. On this Friday when you went over there did you know that your brother and Mr. Watts were already over there?

A. No, sir; I did not.

Q. Had you been at your office for a week?

A. I cannot say I had been away for a week. I think I took sick on Monday or Tuesday of that week and did not get down to the office until after that Friday. That Friday afternoon I went directly to New Albany from my house.

Q. What was it that occasioned you to go over there at that special time?

A. Word was delivered to me, I cannot say how it came positively, whether by phone or not, but I got word that the Walters people were very restless that their contract was not being carried out and that the boilers had not been delivered and they were being delayed and they begged me to go over.

Q. Name the parties that were present in there when you went in there?

A. Judge Utz, Mr. Kelso, D. A. Sachs and I can not say whether the clerk was in there all the time or not but there was some gentleman whom I presume was the Clerk who was in and out of there.

Q. Was W. W. Watts there?

A. Not when I got there. I do not remember who opened the door when I got there but my brother came up to me and spoke to me about my being out and while we were there talking Judge Utz and Mr. Kelso were talking together and the whole thing was interrupted when Harry or Henry—I don't know what his name is—came in and Mr. Watts.

Q. What took place?

A. Mr. Jewett offerred some kind of a paper or had it there at any rate and Judge Utz was dissatisfied with it. It was a lot of figures when it should have been an itemized statement of some sort and he went on to make some excuses why it was not what the Judge wanted, that he had left the work to be done by some clerk or agent or bookkeeper of the trust company and the clerk had not itemized it and he was begging further time in which to do it and the judge was insisting that the thing should be filed and ought to be done and to the best of my recollection said he would have to get it in that afternoon. There were some other matters discussed but I can not recollect what they were but at any rate in continued for some little while and I waited until I could get an opportunity to speak to Judge Utz about the Walters matter on which I had come and I was feeling badly and asked them all if they would not go out and take a drink in plain English and Judge Utz said he would go and Mr. Watts went along. Mr. Kelso declined and Brother D. A. said he was not feeling right and he did not care to go. Previous to going out I also heard Judge Utz tell Mr. Kelso to prepare an order removing the Receiver and appointing a new Receiver, Mr. Kelso, and then there was some discussion about the bond. Judge Utz was insisting on a large bond and Mr. Kelso seemed to think that a bond of three or four thousand dollars would be ample and went on to say that he did not have money or something to pay for an expensive bond and Judge Utz said "It does not come out of you personally, it will be charged as an item of expense against the estate" and then after that he told Mr. Kelso to go ahead and get up that order and that was the first opportunity I had to talk upon the subject I had come on and then not feeling well myself I invited them all out and Judge Utz accepted and Mr. Kelso said he had to draw his orders and D. A. declined.

Q. Who went out at the time that you did, if you remember?

A. To the best of my remembrance we all got up at the same time and I walked on out with Judge Utz and I am not sure whether Mr. Kelso went with us or not. I will say this to you—I heard Mr. Watts make the statement about Mr. Kelso having gone along but I won't be positive about that. I can not say, I don't know.

Q. Did Mr. Kelso come out of the door with you or not?

A. I can only say that my recollection is that he did.

Q. Did D. A. come out with you?

A. No, sir—I never saw D. A. after I went out of the room that afternoon.

Q. Where did you go?

A. We went to a cafe. I do not know the names of the streets in New Albany but it is about a block up on the same street with Hoerter & Hester's office.

By Mr. Hester: Pearl Street.

Q. How long did you three remain there?

A. Judge Utz left Mr. Watts and me seated there—I think it was after five o'clock. I do not know why he went or where he went to. My recollection is that he was disturbed two or three times while he was seated there with us.

Q. By the Court. The question is how long did you stay there?

A. Judge Utz left us shortly after five o'clock and after Judge Utz left Col. Jewett came in and sat down for a few minutes and then he and Mr. Watts and I went out front and while standing in front Mr. Jewett said something about having to leave, that he was going to have people at dinner that night or he was going to some house for dinner and we started up the street and met Mr. Zier and he walked as far as the corner and then I went up to the court house where I had last seen Brother D. A. and I did not find him and I looked at my watch coming down the steps and saw that it was close on to six o'clock and I saw a car standing at the corner and I ran past Mr. Watts and Mr. Zier who were standing there and called to Mr. Watts to tell D. A. that I could not wait for him any longer that it was six o'clock and I could not find him and I had gone.

Q. That was about six o'clock and you left?

A. Yes, sir.

Q. It took you about forty-five minutes to get home?

A. Yes, sir.

Q. Did you call your brother up after you got home?

A. Yes, sir. After I had eaten supper I called him up.

Q. About what time?

A. I can only figure it. To the best of my recollection the way I figure it it was somewhere between seven and half past seven.

Q. Did you find him at home?

A. Yes, sir.

Q. Did you know anything of the nature of the proceedings over there except that there was a Receivership suit pending in the Floyd Circuit Court in which you had a claim filed or represented an interest?

By the Court: Is there any charge that he had anything to do with this matter.

Mr. Smith. Nothing at all.

The Court. Then I don't see the materiality of it.

Q. Very well. Were you present at the interview in your office on Monday?

A. I was present for a short while in the afternoon.

Q. Now, tell what took place in your own way while you were there?

A. After I came back from dinner sometime in the afternoon, I won't be positive the time but I know it was after half past two I had occasion to go back to the room where my desk is and the letter press—on two or three occasions and while in there to copy a letter or after a paper I heard Mr. Kelso make a remark. I should say at that time there was in the room Judge Utz, Mr. Kelso and D. A. There was some talk about going to Indianapolis and then further along I heard Mr. Kelso say he thought Mr. Watts should raise the money to bear the expenses, possibly not those words but the substance. I had been standing close to the folding doors connecting the two rooms and Mr. Kelso turned to me and asked me what I thought about it. I said "I don't know anything about it Mr. Kelso but I would suggest that you ask Mr. Watts over here." I turned to D A. and said "I think you ought to go and telephone to Mr. Watts." He left the room and then returned and said that he had. I am not positive whether I remained there then. I don't think I did but at any rate when I was back in there later J. R. Watts, John, we call him and W. W. came in and that same question arose again. I am not certain who put the question to Mr. Watts but I think it was D. A. said to W. W. Watts "Mr. Kelso thinks you ought to raise the money to stand this expense or to stand all the expense" and Mr. Watts seemed surprised and said "Me?" "I don't see why I should do it." Then it was explained to him that it was not intended that he personally should do it but that his client and he said: "I have no way of doing that. I don't see how I could ask it." Judge Utz said "Mr. Kelso I don't think the matter of expense is going to be as much as you think." Mr. Kelso seemed to think that it would amount to two or three or four thousand dollars according to my recollection. Judge Utz did not seem to think so and he said "I have some money in my

court—I don't remember how that conversation ended—I would not be positive.

Q. Did you hear anything about whether or not he and your brother D. A. Sachs were or were not to come to Indianapolis?

A. Yes, sir—I hear this the question was discussed about their coming and W. W. Watts addressed himself to Judge Utz principally and said as I understood it "Up to now I had fully determined to go to Indianapolis but since you feel that I ought not to go, I don't know exactly what to do" and to the best of my recollection but Utz and Kelso said they preferred that D. A. and W. W. Watts should not come. Then John Watts the younger brother said "Gentlemen, I don't know. It throws a look about W. W. that I don't like. It seems to me that he ought to go but you are all much older than I am" or substantially that. I don't think that matter was determined while I was there.

Q. Did you hear any statement on the part of your brother D. A. to the effect that he would not go because he would have to testify against his friend Watts and before he would do that he would go to Jamaica or Texas or California or some other parts?

A. He made no such statement in my presence or hearing.

Q. Did you hear any statement by Judge Utz in substance to the effect that he could not see Mr. Hester but that he would have Mr. Stotzenberg see him.

A. I only have an indistinct recollection of it. I would not like to make any positive statement as to what the conversation was.

Cross-examined by Mr. Kealing.

Q. Did there seem to be any discussion on the part of Mr. Sachs and Mr. Watts as to whether they should come to Indianapolis to answer the citation of the Federal Court?

A. From the remark I heard, there evidently must have been some talk about it.

Q. Did they hesitate to come?

A. They were at that time.

Q. Why were they hesitating?

A. I could not tell you.

Q. Did they give any reasons why?

A. The only thing I know was from what I gathered there that Judge Utz did not want them to come.

Q. I asked about them. They knew and you knew that they had been cited?

A. I think I did.

Q. What if anything did they give as reasons why they should not come?

A. I did not hear.

Q. Then the whole sum and substance of the conversation was that the two men that had been cited were trying to convince the Judge and Kelso that they ought to come and the Judge and Kelso were trying to convince them that they ought not?

A. My own idea of it was this way—

Q. Can't you answer?

A. I cannot say that they were trying to convince the Judge and Kelso that they ought or that the Judge and Kelso were trying to convince them that they ought not.

Q. Did you not say that Kelso advised them not to come?

A. He said he would prefer that they would not.

Q. Did you not say the Judge was trying to convince them that they ought not to come?

A. The Judge said he would prefer they would not come.

Q. You are a lawyer?

A. Yes, sir.

Q. I understood you to say that Judge Utz said that he had some money in this proceeding of the M. Zier & Co. receivership?

A. Yes, sir.

Q. Out of which he might pay the costs and expenses of these people to Indianapolis in these contempt cases?

A. Yes, sir.

Q. Did that strike you as a lawyer with being a peculiar proposition?

A. The whole thing struck me as being peculiar.

Q. You as a lawyer knew he had no right to do that?

A. That he had no right to use the money for that purpose? No, sir—I did not.

Q. Kelso did say to these people that they had promised to pay the costs and expenses?

A. No, sir: he did not.

Q. How did the question come up about the costs?

A. I can only tell you as I have said that I just heard the the latter part in which he said he thought Mr Watts ought to raise the money to pay the expenses.

Q. What time on Friday did you go to New Albany?

A. I think I reached there shortly after three o'clock.

Q. You proceeded directly to the court room?

A. I did.

Q. Had you before that day met Judge Utz personally?

A. Yes sir.

Q. Did you know him?

A. Yes sir.

Q. Did you know Mr. Kelso before that?

A. I met Judge Utz and Mr. Kelso at that creditors meeting. That was the first time I met them.

Q. You went to the court house for the purpose of transacting your boiler business?

A. Yes sir.

Q. When you went to the court room you found they were engaged on some other matter?

A. They were in chambers on some other matter.

Q. You went to the Judge's room?

A. Yes sir, and knocked at the door.

Q. How long did you wait until you presented your matter? Or did you present your matter?

A. I did not have an opportunity. Mr. Jewett and Mr. Watts came in.

Q. Did you present your matter that afternoon at all?

A. Yes sir.

Q. At what time?

A. On the way out the street to this cafe.

Q. Not before?

A. No sir, I had no opportunity.

Q. You had the opportunity to invite the Judge to take a drink?

A. Yes sir.

Q. Why didn't you tell him in the court house that you would like to present your matter and wait until you could do it?

A. My recollection is I did tell Judge Utz what I came for.

Q. When?

A. The first opportunity I had to ask him if he would not go along to the cafe?

Q. To present the matter?

A. Not for that purpose alone but to give me an opportunity.

Q. To present the matter?

Was that what you invited him to take a drink for?

A. No sir I invited to take a drink.

Q. I will ask you when you first told him this business that you came on. Was it in the court house or not?

A. I think it was up in the chambers.

Q. What did you say and what did he say to you?

A. I told him I had come over to see about the Walters contract and my recollection is he said something to me that it would be all right or it would be carried out and that is the best of my recollection.

Q. That was in the court house?

A. Yes sir.

Q. Why did not you go home?

A. Because I wanted to talk with Judge Utz further. The matter was not settled with me. It was very indefinite. I had been sent to find out about it.

Q. Did you talk further with him?

A. Yes sir.

Q. Where?

A. On the way out or at the bar room or cafe.

Q. Which was it a bar room or a cafe?

A. Either way you call it.

Q. You know a bar room from a cafe?

A. This was a cafe adjoining a saloon where tables were set.

Q. I don't know, I ask you if you know. What did you say to him at that cafe or bar room what ever it was?

A. I did not get any more definite answer.

Q. What did you say to him?

A. Now if your Honor please I ask the court for protection. I want to answer him, but he asks in such a manner—

The Court: If you want to answer, answer.

The question was read to the witness.

A. I told him the Walters were very much put out and distressed about the matter so much so that they had got me out from home when I felt that I ought not to be out and I wanted to know if he couldn't hurry the matter up, that it was being delayed and the receiver was not doing the work as he had promised to do and he assured me it would be completed and I did believe what Judge Utz said, but I didn't get my work.

Q. When you went over to that saloon, Mr. Watts went with you?

A. Yes sir.

Q. You and the Judge and Mr. Watts went from the court house to the saloon?

A. Yes sir.

Q. Judge Utz was in a good humor?

A. I can't say that he was or was not. From the best of my recollection he appeared not to be in good humor.

Q. How many drinks did he take around there?

A. I think while Judge Utz was there there were three drinks taken possibly.

Q. And did I understand you to say that he was not in good humor?

A. Yes, he did not seem to be in the very best frame of mind.

Q. How long did you stay together at that place?

A. Judge Utz left us some time shortly after five o'clock.

Q. What time did you go to that cafe?

A. I should say between half past three and four o'clock, but I could not state exactly.

Q. You three were there from an hour to an hour and a half?

A. I think we were.

Q. What were you talking about?

A. I could not tell you now.

Q. Were you telling stories?

A. I could not tell the conversation.

Q. Nothing at all that occurred there?

A. Nothing more than I have related.

Q. You don't mean to say that took an hour and a half to tell that?

A. No sir.

Q. You have no recollection of anything that occurred.

A. No definite recollection.

Q. Where was D. A. Sachs at that time?

A. I could not tell you.

Q. You left him at the Court room in Judge Utz's chamber?

A. In Judge Utz's chamber.

Q. Then after the Judge went you and Mr. Watts stayed at this cafe until dark?

A. Till dusk I will put it.

Q. It was about six o'clock?

A. No sir, it was possibly twenty minutes or a quarter to six.

Q. What were you waiting for after Judge Utz left and your business was transacted?

A. Shortly after the Judge left Col. Jewett came in through the archway there and he sat down or rather was invited by Mr. Watts and he sat down and took a drink and then there was a discussion there about some case of Mr. Watts' on demurrer or something of that kind and they ran along in the conversation from one thing to another until we left somewhere about twenty minutes or a quarter to six.

Q. All three left together?

A. Yes, sir.

Q. Col. Jewett, Watts and yourself?

A. Yes, sir.

Q. Jewett stayed until you went to Louisville?

A. No Jewett stood with us for a few minutes and then excused himself and said he was going out to dinner that night or would have people at his house.

Q. He stayed until you left the cafe?

A. Yes, sir.

Q. You did not go back to the court house any more?

A. Yes, sir.

Q. To see whom?

A. To find D. A.

Q. Was he there?

A. I think not.

Q. The last thing you heard before you gentlemen went to the cafe, was that Judge Utz told Mr. Kelso to go to his office and prepare the order for the removal of this receiver?

A. Yes sir that is what I heard.

Q. And Kelso proceeded to his office so far as you know?

A. I could not tell you where he went.

Q. I understood he left the court room with you? Did you say that?

A. I said I would not be positive.

Q. After the Judge had said that to Kelso—that was said in the presence of Mr. Watts and Mr. D. A. Sachs?

A. Yes sir.

Q. Then you left Mr. D. A. Sachs in the court house and you don't know where he was that afternoon?

A. I do not after that.

Q. What do you say the discussion was in the court house at three o'clock after you say you got there, what was it about?

A. Henry Jewett or Harry Jewett, or whatever his name is—

Q. Call him Harry.

A. He had some kind of a report that it seemed he was to file and the judge was expecting, and he was wanting further time to file the report. The judge did not want to except it because it was not itemized and did not have vouchers.

Q. What part was Mr. Watts taking in that?

A. I could not say that I heard him say anything.

Q. Mr. Watts was the attorney for the receiver?

A. I do not know.

Q. What part was Mr. D. A. Sachs taking?

A. Let me correct that. I said I did not know. I think he was, I think I do know that.

Q. Was Mr. Watts taking any part in the discussion?

A. I don't think I heard him say anything.

Q. Was Mr. D. A. Sachs?

A. Not to my best recollection.

Q. Did you ask D. A. Sachs what he was doing there?

A. No sir.

Q. Do you know what he was doing there?

A. No, sir.

Q. You knew he had not been attorney for anybody in that proceeding did you not?

A. I knew I was attending to the Walter business and I did not know of any business he had.

Q. You knew he was not there on the same business you were?

A. He was not so far as I know.

Q. I understand your firm is arranged so that one partner takes one thing and another another?

A. Yes sir.

Q. You had the Walter's business?

A. Yes sir.

Q. You knew he was not on that?

A. Yes sir.

Q. Did it surprise you to find him there in that case?

A. No I cannot say I was surprised.

Q. Did you make any inquires of him why he was there?

A. And no sir.

Q. And he said nothing to you about it?

A. No sir.

Q. Who accompanied you back to Louisville?

A. Nobody.

Q. You did not see your brother or Mr. Watts after you left the cafe?

A. No Sir.

Q. Were you there at New Albany on Saturday?

A. No sir.

Q. That was the only time you were there?

A. That Friday afternoon.

Q. Did you know that your brother was back on Saturday?

A. I have no recollection now of knowing it.

Q. Where were you on that Saturday following your visit to New Albany?

A. I could not tell you—I was in the city of Louisville.

Q. Have you not an idea of what you were doing?

A. I have an idea if that will answer.

Q. Have you an impression?

A. I was attending to business or at my home.

Q. Were you sick?

A. I think not.

Q. Did you know that your brother was going back to to Louisville the next day, the Saturday following the Friday you were there?

A. No sir.

Q. Did you inquire over the telephone when you talked to your brother as to what he had been doing at New Albany?

A. No sir.

Q. Did you inquire of either of your brothers Saturday as to what D. A. Sachs was doing there on Friday?

A. I don't think I did.

Q. Did you know that your brother Mr. Sachs was representing Mr. Watts there in his trouble with the judge?

A. I cnnnot say whether I did or not.

Q. Did you know that your brother had been employed or solicited by Mr. Watts to go to New Albany to square him, Mr. Watts, with Judge Utz?

A. When?

Q. Either Thursday, Friday, or Saturday.

A. I could not tell you when I learned it, but I certainly did not know it when I was over there that Friday afternoon.

Q. You did not know when you did learn it?

A. No sir.

Q. You were not called in to consult Monday when these contempt proceedings of the Federal Court were up?

A. No sir.

Q. You accidentally came in?

A. My desk was in there and the letter press.

Q. Did you know what the consultation was for?

A. I presume I did.

Q. Did you go in purposely to hear what was being said?

A. No sir.

Q. But you happened in there two or three different times and heard these things?

A. I was forwards and backwards, two or three times, yes sir.

Q. For instance you heard John Watts ask the question of Mr. Kelso and Judge Utz as to whether your brother Mr. Sachs had had any part in advising these people in this receivership matter?

A. I made no such statement.

Q. You never heard anything of that?

A. I did not.

Q. What was it you heard John Watts say? Anything?

A. About what?

Q. About anything?

A. I heard John Watts say he did not think his brother W. ought to remain away, that he was a much younger man than the balance of them and intimated that he felt a little out of place in advising contrary to what Judge Utz and Mr. Kelso had requested.

Q. Did you hear Judge Utz say anything at that meeting on Monday?

A. I heard him say that he preferred that they would not go.

Q. Anything else?

A. I heard Judge Utz say to Mr. Kelso, as I told you a little while ago, he did not think the expenses would be as great as Mr. Kelso was expecting and he had some money in his hands or the court.

Q. Did you hear Mr. Kelso say what lawyers they should get in Indianapolis? Mention any names?

A. No sir, I was not in there at that time.

Q. While you were in the room, you never heard your brother say that he would prefer to Jamaica to going to Indianapolis because he would have to testify against Watts?

A. No sir.

Q. How much of the time do you think you were in that room when the consultation was going on?

A. I could not give you any idea, I don't know.

Q. How many times were you in there?

A. I think I was in the room where they were just one time.

Q. Morning or afternoon?

A. Afternoon.

Q. That conference lasted nearly all day?

A. There was some one or the other of them there pretty much all the day.

Q. Don't you know that they came at ten o'clock and stayed until nearly noon and went out to lunch and came back and stayed nearly until night?

A. I could not say when they came or left. I was not there either time.

Q. When you left, did you leave them there?

A. Yes sir.

Q. What time did you leave them?

A. I do not know what time of the day that was.

Q. What time did you usually leave?

A. They had left before I left for my supper.

Q. Did you see them go?

A. No sir.

Mr. Fairleigh: My understanding is that we offered in evidence the files of the bankruptcy proceedings. And you offered in evidence the record of the Floyd Circuit Court in the case of Ryerson & Son against M. Zier.

Mr. LaFollette: I offered that part of the two transcripts showing the entry of the 14th of February. You said at the time that you wanted to offer all of it.

Mr. Fairleigh: I do that now. I offer exhibit B with the response of Watts, with the understanding that the bankruptcy proceedings have been filed.

The defendants here rested.

W. C. Utz, recalled for the government and examined by Mr. Kealing testified as follows:

Q. You have been on the witness stand before in this case?

A. Yes sir.

Q. I will ask you to state to the court what if anything D. A. Sachs said on Saturday morning Feby. 21st, at your office at the court house at New Albany about the militia being called out.

A. He asked how it was done.

Q. State all that was said.

A. My recollection is that Mr. Kelso and I were in the office and D. A. Sachs was sitting next to the window next

to Spring Street, side of the court house, and he asked me, "how do you call out the militia?" I said, "why do you ask that?" And he said, "When I go into anything you know I go to the end."

Q. What, if anything, did you hear him say about being a state's rights man?

A. I heard him make that statement a number of times.

Q. Tell what he said.

A. He said he was a great state's rights man.

Q. State whether he said in that connection anything about calling out the militia?

A. Yes sir.

Q. You may tell the court whether at Mr. Sach's office in Louisville you said to Mr. Sachs or Mr. Kelso or any one in that office that you had money in your hands or in the hands of your receiver out of which you could pay the expenses of the people coming here to answer these contempt proceedings?

A. I don't think I said that. There was some discussion about that. There was a great deal of talk and I do not recall all that was said.

Q. I will ask you to state to the court if at that consultation at Mr. Sachs' office on Monday, the 23rd of February, at which you say you were present, J. R. Watts asked you whether his brother W. W. Watts had in any advised counsel or had anything to do with the taking of the property from the Federal Court receiver and you answered that he did not?

A. The form of the question is in, I would say no.

Q. If you had any conversation on that, tell the court what it was.

A. I did. Mr. John R. Watts, young Mr. Watts, was standing at the end of the table, and he called me to one side, I was sitting in a chair, and I got up and walked to where he was, and he asked me this question if his brother W. W. was the attorney for Mr. Kelso in the receivership and I said no, and that was all that was said on that subject.

Q. Was anything said about your making out affidavits and giving them to Mr. Watts on that subject?

A. By whom?

Q. By John Watts or anybody else.

A. No sir.

Q. I will ask you to state if at that conference on Monday at Mr. Sachs' office you said to the people in that conference that you preferred that W. W. Watts and D. A. Sachs would not come up here to answer the citation of this court?

A. No sir, I don't think I said that. There was considerable discussion about that. In view of what Mr. Watts

had said that the Judge of this court seemed angered at him. I don't think I said it that way. I might have said, if I said anything that it might be best at this time not to come. I may have made that statement.

Charles D. Kelso, re-called and examined by Mr. Kealing, testified as follows:

Q. What if anything did D. A. Sachs say to you or in your presence on Saturday the 21st of February, at Judge Utz's court room about the militia or calling out the militia?

A. He inquired of the judge as to the statute regulating the calling out of the militia and the Judge asked him why he asked that question, and he said when he got into a thing he went to the end of it.

Q. Is that all he said?

A. That is all I can remember.

Q. What if anything did he say about his being a great state's rights man?

A. He said he believed in state's rights, that he was a great man for that principle.

Q. I will ask you if it is true that at Mr. Sachs' law office, in Louisville, on Monday, at the time you were consulting over the citations sent from this court, you were asked the question by John Watts as to whether W. W. Watts had in any way advised or assisted in the prosecution of this receivership in the Floyd Circuit Court and you answered him that he had not?

A. No sir.

Q. Was anything of that kind said to you?

A. He put a question of that kind and I said that Mr. Watts was not my attorney but that I had heard Mr. Watts express opinions about the law of the case quite frequently during the time this matter was up.

Q. You remember the invitation that one of the Sachs gave to go to the cafe on that Friday afternoon?

A. I don't remember the invitation, but I know they went to Matt Claire's saloon.

Q. On that afternoon you may state whether D. A. Sachs remained in the court room or whether he went to your office?

Question objected to and objection sustained as having been asked and answered.

Mr. Kelso: I desire to make one statement about the relations between myself and Mr. Stotsenberg. They are very cordial.

Mr. Smith: We object, he has stated that.

A. Our relations are very cordial and he is now attending to my business. His father is staying at my office.

Mr. Miller: We object to that. He stated that identical fact.

The Court: He may state it again. I do not remember it.

Mr. Kealing: We have subpoenaed Mr. Ruth to rebut the statement made by Mr. Sachs that he never was in this plant and we have sent for the stenographer in Mr. Kelso's office and have sent for two deputy clerks, and they will be here in the morning.

Mr. Miller: I don't know how closely your Honor observes the rules of evidence in a matter like this, but with reference to the question of Mr. Sachs being in that place, they brought that out in their original case and then was the time to put in their entire evidence on that subject.

The Court: Strictly speaking, that may be true, but I will hear the evidence on that point. I want to know myself the truth about that.

The Court thereupon adjourned until tomorrow morning.

FRIDAY, MARCH 13, 1903.

MORNING SESSION.

The Court met pursuant to adjournment, present the same as on yesterday.

Fred S. Ruoff, a witness called on behalf of the Government in rebuttal, being first duly sworn testified as follows:

DIRECT EXAMINATION.

Questions by Mr. LaFollette:

Q. State your name to the Court.

A. Fred S. Ruoff.

Q. Where do you live?

A. New Albany.

Q. Are you the gentleman who acted as watchman at the M. Zier & Company plant under the direction of Mr. Kelso when he was appointed Receiver?

A. Yes sir.

Q. Are you acquainted with Mr. D. A. Sachs?

A. Not until that day.

Q. But you know him do you?

A. Yes sir.

Q. The gentleman that sits back there?

A. Yes sir.

Q. You may tell the Court if you were at the M. Zier & Company plant on Saturday and on Friday.

A. On Saturday.

Q. On Saturday were you first there?

A. Yes.

Q. The 21st of February?

A. I don't remember the date exactly.

By the Court:

Q. Just a moment: It was the day, the next day—

A. (Interrupting) The first day I had taken possession.

By Mr. LaFollette:

Q. The first day you had taken possession under the direction of Mr. Kelso?

A. Yes sir.

Q. You may tell the Court whether or not Mr. Kelso was at the plant on that day.

A. Him and Mr. Sachs came there I expect along between two and three o'clock.

Q. When you say Mr. Sachs you may state which Mr. Sachs you mean.

A. Mr. Sachs right there.

By the Court:

Q. Mr. D. A. Sachs the defendant here?

A. Yes sir, Mr. Kelso introduced me to him.

By Mr. La Follette:

Q. About what time in the day?

A. I judge along about two or three o'clock.

Q. Was there any statement made by Mr. Kelso in his presence or by Mr. Sachs himself about the plant?

A. Well they were discussing the matter and Mr. Sachs said there was very little left for us yet.

Q. Very little what?

A. Very little left.

By Mr. Kealing:

Q. For us yet?

A. For us yet. Yes sir, that is about all. They were discussing other matters; I didn't pay much attention to it.

By Mr. La Follette:

Q. You may state whether they went through the plant.

A. They went through over the platform; they didn't go off the platform very much; probably half the shop.

CROSS-EXAMINATION.

By Mr. Fairleigh:

Q. Tell the Court whether you are the same person who was cited for contempt in this case.

A. Yes sir.

Q. You were found guilty of contempt were you?

A. Yes sir.

Q. And put in jail therefor.

A. Yes.

Q. This was Saturday afternoon about two or three o'clock.

A. Somewhere around between two and three.

Q. You are certain about the hour?

A. No sir I wouldn't be certain about the hour.

Q. How certain are you about that?

A. Just about near that time.

Q. Was it between two and three somewhere.

A. I think it was between two and three.

Q. It couldn't have been before two?

A. I couldn't say; along between two and three; I didn't look what time it was.

Q. Did you take dinner that day anywhere?

A. I took dinner there at the shop.

Q. Had it with you?

A. Yes sir; brought to me.

Q. You had never seen Mr. Sachs before?

A. No sir.

Q. Did you ever see him since?

A. Yes sir.

Q. Where?

A. In the Court.

Q. When?

A. Monday.

Q. Of this week?

A. Yes sir.

Q. You never saw him from that time until you saw him at Indianapolis on this trial?

A. Yes; not from the time I seen him at the plant.

Q. What time had you been put in charge as watchman?

A. I was notified on Friday night before the Saturday about nine o'clock to report at Mr. Zier's at 7 o'clock in the morning.

Q. You came in the morning, Saturday morning at seven o'clock?

A. Yes sir.

Q. You had never heard of Mr. Sachs before had you?

A. Not that I know of.

Q. How long did Mr. Sachs and Mr. Kelso stay there?

A. I guess along about ten or fifteen minutes, something like that; I didn't take no particular note of the time they came there or what time they were there.

Q. Where are those boiler yards situated with reference to this Court House.

A. I judge about three blocks to the Court House.

Q. In what direction?

A. It is kind of Northwest.

Q. Do you know how they came there, whether they rode on the street car or walked?

A. I couldn't say.

Q. Where did you first see them after they entered or how they entered it?

A. They came there to the door; the door was locked.

Q. Did they knock on the door?

A. Yes sir; they called me. I recognized Mr. Kelso's voice when they called.

Q. Do you think there is any possibility of a mistake about the identification of Mr. Sachs? That you might be mistaken about the person?

A. No sir.

Witness excused.

William F. Ruoff, a witness called on behalf of the Government in rebuttal being duly sworn testified as follows:

DIRECT EXAMINATION.

Questions by Mr. LaFollette:

Q. You may state your name to the Court.

A. William F. Ruoff.

Q. Where do you reside?

A. New Albany, Indiana.

Q. Are you the deputy clerk in the Clerk's office of the Floyd Circuit Court?

A. Yes sir.

Q. How long have you served in that capacity?

A. As a sworn deputy for more than eight years; in the office for about eleven years.

Q. You are acquainted with Mr. C. D. Kelso?

A. Yes sir.

Q. Did you know of the fact of the case pending in your Court of Ryerson & Son against M. Zier & Company?

A. Yes sir.

Q. You may state to the Court whether or not you made the order book entries.

A. I made all of them.

Q. You are acquainted with Judge Utz of the Circuit Court?

A. Yes sir.

Q. Do you know Mr. W. W. Watts?

A. Yes.

Q. Do you know D. A. Sachs?

A. Yes sir.

Q. You may state to the Court if you remember the occurrence of Mr. W. W. Watts and Mr. D. A. Sachs coming over to New Albany and appearing before the Judge of the Floyd Circuit Court during the week of the 18th, 19th, 20th, and 21st of February last.

A. Did you ask me if I remembered that?

Q. Yes.

A. Yes sir I do.

Q. You may tell the Court if you can the first day that you now call to mind of their being present before Judge Utz after the 18th of February.

A. I am most sure it was the 19th.

Q. Do you remember whether or not you was present on the 18th when they were before Judge Utz, if they were?

A. Not that I remember of; I was in the office but I have no distinct recollection about the matter; never knew about this proceeding at that time or any jurisdictional matter with the Floyd Circuit Court.

Q. Do you remember then that they were there on the 19th which would be Thursday of that week.

A. Yes sir I remember that.

Q. You may tell the Court what you remember about that? About what hour you remember they were there and as definitely as you can the occurrences?

A. Judge Utz asked me to come up to his office about half past eight o'clock or possibly nine, and when I got up there I saw Mr. Sachs there; he was talking to the Judge; the Judge introduced me to him if I remember right about that. I think the Judge introduced me to him; he was discussing the matter of the suit of Ryerson & Son against Zier & Company.

Q. Was there anything being said about the bankruptcy proceedings or about the appointment of Mr. Connor as Receiver in the Bankrupt Court?

A. Yes sir.

Q. You may tell the Court what was said about that if you can remember?

A. Well they were just discussing the fact that Mr. Hester came up here I think and asked for the appointment of a Receiver in this Court, and probably—well they were discussing the matter of the Receiver appointed by this Court and discussing the matter of the suit of Ryerson & Son in our Court.

Q. Well who else was there during the meeting if you know? Well, during the forenoon if you can remember?

A. I think only Mr. Kelso to the best of my knowledge besides Mr. Sachs.

Q. You do not remember about Henry Jewett coming in and talking about turning over the property, do you?

A. Well yes sir I do.

Q. Well you may state to the Court whether or not either on that day or on the day following, which would be Friday, there were any orders made which you were directed to enter of record?

A. Well in the first place I think there was an order made holding Mr. Watts in contempt of the Floyd Circuit Court;

the next one holding the New Albany Trust Company in contempt, and these were all proceedings as of the 20th; but I think the proceedings in the first two I have named were probably made on the 19th; then there was an order made for the removal of the New Albany Trust Company which was filed by me and entered of record and the qualification of Mr. Kelso as Receiver and an order showing the refusal of Mr. Connor to turn over the property, and the Judge issuing a summary writ against Mr. Connor to turn over the property—or of the Sheriff to take the property. I think that was all.

Q. Now you may tell the Court what was said if anything about those orders and in connection therewith by either Mr. W. W. Watts or Mr. D. A. Sachs before Judge Utz, or in your hearing at any time.

A. Well they were discussing the carrying out of all these orders, all the parties present, Mr. Sachs and Mr. Kelso and Judge Utz. I dont remember of Mr. Watts having been there but I think once; I don't think that he took any hand in the proceedings at all that was noticeable, that I could notice. If he was he didn't say anything. I don't remember him saying anything particularly.

Q. Did Mr. Sachs say anything about it?

A. Yes sir.

Q. Can you call to mind anything he said?

A. Well he discussed carrying out all these orders; his discussion bordered upon the contents of all of these orders; in fact the discussion was along these lines before the orders were made, before they were drawn up.

By the Court:

Q. What orders do you refer to?

A. These vacation orders.

Q. Were those orders with reference to taking the property from Mr. Connor?

A. Yes sir.

Q. And the summary writ issued to the sheriff?

A. Yes sir.

By Mr. LaFollette:

Q. Do you remember of having been furnished with an addition to be entered in connection with the order book entry of February 14th, the last day of the term, noting the withdrawal of C. D. Kelso as attorney of record for certain parties?

A. Yes sir.

Q. You may state who furnished you with that entry.

A. Mr. Kelso; he wrote it also; it was in his handwriting.

Q. You may state whether or not you entered that?

A. I did enter it, yes sir.

Q. You may state who was in company with Mr. Kelso at the time that he prepared and furnished you, or when he furnished you that order to be entered?

A. Mr. Sachs and Judge Utz.

Q. Do you remember when that was furnished you—

By the Court:

Q. (Interrupting) Wait just a moment. Read that question and answer.

The preceding question and answer were read by the reporter.

Q. The Court: Well which order to be entered? Does he mean that alteration?

The Witness: Yes sir, that is the one I speak of. That was made before the record was signed by Judge Utz. It was on the last day of the term and generally the proceedings of the last day of the term are fifty or one hundred pages long; I couldn't get them up on the last day of the term.

By Mr. LaFollette:

Q. That is you mean to say that the order book entry had not yet been signed by the Judge?

A. No sir.

Q. And this addition was made to it on the 20th of February?

A. Yes sir.

Q. And written in, and when finally signed up made to appear as part of the business done on the 14th?

A. Yes sir I take it that way.

Q. The addition which relates to the withdrawal of Mr. Kelso was in fact made and handed to you on the 20th of February was it not?

A. I think it was the 20th; yes sir.

Q. Do you remember what time in the day and upon what day the writ was given out from your office addressed to the Sheriff directing him to take the property of M. Zier & Company and deliver it to Mr. Kelso?

A. Yes sir, that was on Friday the 20th of February.

Q. At what time in the day?

A. Why it was late in the evening; I don't remember just exactly the time; probably six o'clock.

Q. You may state to the Court whether or not Mr. Sachs had gone away from that office before that was issued?

A. I think he did yes sir.

Q. You may tell the Court whether it had been talked of while he was there at your office?

A. It wasn't discussed in our office; it might have been discussed up in the Judge's office.

Q. Whether you knew of it? Whether it was in fact talked of in your presence when Mr. Sachs was present?

A. I think it was. I have no distinct recollection on that but it was all in connection with these other proceedings, and that is my recollection of it.

Q. Mr. Ruoff do you remember that there was filed in the Floyd Circuit Court an intervening petition of Frederick D. Connor, Receiver in bankruptcy, asking that the property of M. Zier & Company be turned over to him as such Receiver.

A. I think I do; yes sir.

Q. Who appeared in connection with that petition? What attorneys?

A. Now in relation to that there were two orders made as of February the 14th I think on that matter. You will find there was a small order made on the last day of the term, the last entry on that day following that addition to that record and I think that shows the filing, or Mr. Connor asking leave to intervene in the Ryerson case in the Court and asking that the property be turned over to him as Receiver.

Q. What particularly I wanted to know is you may tell the Court whether or not in connection with that petition and order there was anything said by Mr. D. A. Sachs on the 20th, on the 19th or 20th of February in reference to any change in that in any way?

A. Now which one do you speak of? There was a long order made as of the 14th I think showing the appointment of Mr. Connor as Receiver?

Q. Well either one of those orders?

A. Well that small order was made on the 20th I think, drawn up by Mr. Kelso, and Judge Utz and Mr. Sachs were present when it was drawn up and I think took part in all the discussion.

Q. That is the one as to Mr. Kelso withdrawing?

A. No, that is the order drawn up showing that Mr. Connor asked leave to intervene.

Q. Now was there any change made in that or anything said about it by Mr. Sachs on the 20th?

A. In the other order there was no change made in that at all because it was drawn on the 20th?

Q. The other one?

A. In the other one there was no change made in that at all that I know of.

Q. Was there any talk between Mr. Sachs and Mr. Kelso about it in your presence?

A. I don't remember.

Q. You may also state to the Court whether or not you had any conversation with Mr. D. A. Sachs about the M. Zier & Company plant as to whether or not he had seen it and what it was worth?

A. He stated to me on the corner of Pearl and Spring Street in New Albany Saturday evening about six o'clock that he had been there and he didn't think what was out there was worth five thousand dollars.

By the Court:

Q. That was Mr. D. A. Sachs?

A. Yes sir.

Cross-examination by Mr. Fairleigh:

Q Mr. Rouff you are the son of the Mr. Rouff who has just testified.

A. Yes sir.

Q. You are the Deputy Clerk for the Floyd Circuit Court?

A. Yes sir.

Q. The Court adjourned on the 14th of February?

A. Yes sir.

Q. Thereafter you were quite busy getting up the orders of the Court of the last day?

A. Yes sir.

Q. Your whole time was occupied thereabout?

A. Yes sir.

Q. It was your duty to enter orders upon the Order Book?

A. Yes sir.

Q. Many of them were left over from the last day?

A. Yes sir.

Q. To be entered on the last day?

A. Yes sir.

Q. And which had been ordered before the adjournment of the Court?

A. Yes sir.

Q. You have said, or from what you have said I take it that Mr. D. A. Sachs was present at the time the order was made by Judge Utz directing the issuance of a writ to the Sheriff of Floyd County commanding him to take the property from Mr. Connor Receiver and turn it over to Kelso Receiver. Now is it true that at the time that order was made by Judge Utz Mr. D. A. Sachs was present?

A. To the best of my recollection he was.

Q. The order for that writ was entered late that afternoon or evening?

A. It was not entered till several days after; it was filed that day.

Q. When was it filed?

A. Filed on February the 20th.

Q. Late in the afternoon?

A. Yes sir I think so; possibly two or three o'clock; it might have been that or sometime during the afternoon.

Q. Do you know it was five or six o'clock?

A. The order for the issuance of the writ?

Q. Of the writ.

A. Possibly it was.

Q. What time do you leave your office in the afternoon usually?

A. Well from five to half past, sometimes six.

Q. Do you remember to have been there later that afternoon than usual?

A. Yes sir.

Q. Who asked you to remain there?

A. Well the Court, Judge Utz was still upstairs and it is always customary for the Clerk to wait till the Court goes away.

Q. Precisely. Now upon reflection can you say that you are certain that Mr. Sachs was present when that order was filed for the issuance of the writ?

A. Well I don't know that I could say certain that he was present because Mr. Scott was out of the office and I had to attend to the duties of the office and to the Judge's office too. The Clerk's duties and that; I had to be between both of them the whole time.

Q. So that you can't be certain about that at all?

A. At the time this order was made?

Q. Yes this order for the issuance of the writ?

A. I think I was present but I wouldn't be certain, too certain about it; I thought I was certain.

Q. But would you be certain that Mr. Sachs was there when that order was entered?

A. I think he was there the entire day of the 20th.

Q. Do you mean all the time that the Clerk's office was open?

A. Yes sir.

Q. And didn't leave until the Clerk's office was closed?

A. I think not.

Q. Are you at all certain about that?

A. I am absolutely sure he was there the entire morning, and I think he was there in the afternoon.

Q. He was there in the afternoon I have no doubt, but I am trying to fix the fact as to whether he was there at the time the order for the issuance of this writ was made. Could you at all be certain about that?

A. To the best of my recollection I think he was.

Q. Now going back to this addendum made to the order of the 14th, that long order?

A. Yes sir.

Q. I understood you to say that the matter of that addendum was brought to you by Mr. Kelso and that it was in Mr. Kelso's handwriting.

A. Yes sir, it was handed to me by Mr. Kelso in the Judge's office.

Q. It was not typewritten?
A. No sir.
Q. Are you certain that Mr. Sachs was present when that addendum was handed to you?
A. Yes sir I am sure he was there.
Q. Are you certain he knew anything about it?
A. He was present.
Q. That is all you know?
A. Yes sir, he was talking with Mr. Kelso and the Judge about it?
The Court: About the addendum?
By Mr. Fairleigh?
Q. About what?
A. About this order that Mr. Kelso wrote.
Q. Who else was present?
A. I think myself and Judge Utz and Mr. Kelso and Mr. Sachs were all there.
Q. Can you say what was said by Mr. Sachs about that?
A. No sir I couldn't; I couldn't tell.
Q. Where do you say you met Mr. Sachs on the street when he told you that he had been to the M. Zier & Company works and that they were not worth more than five thousand dollars?
A. On the corner of Pearl and Spring Streets.
Q. On what day was that?
A. Saturday evening about six o'clock.
Q. Late?
A. Six o'clock.
Q. Late that evening?
A. Yes sir.
Q. Who was with him?
A. Mr. Watts.
Q. Who else?
A. That was all.
Q. Was Mr. Zier standing there?
A. No sir.
Q. Was Mr. Kelso there?
A. No sir.
Q. What were they doing on the corner?
A. Waiting for a street car I think to go to Louisville.
Q. You didn't see Mr. Kelso there at all?
A. No sir he wasn't there. Possibly he might have left a few minutes before that. I think he had left a while before that. They were standing up there talking and we had just come out of the Court House.
Q. When did he say he had been to the works?
A. He said that at six o'clock Saturday evening.
Q. I know; when did he say he had been out to the works?

A. I judged from his conversation it was sometime during the afternoon.

Q. Was Mr. Watts present and Mr. Sachs and you and nobody else?

A. No sir.

Witness excused.

Edgar B. Martin a witness called on behalf of the Government in rebuttal being duly sworn testified as follows:

Direct-examination. Questions by Mr. LaFollette:

Q. Mr. Martin you may state your name to the Court.

A. Edgar B. Martin.

Q. Where do you live?

A. New Albany.

Q. You may state whether or not you are the Deputy Clerk in the Floyd Circuit Court.

A. Yes sir.

Q. You may state whether you were about the office on the 19th, 20th and 21st of February last.

A. Yes sir.

Q. You may state whether or not on either of those dates probably on Friday the 20th you were called up to Judge Utz's room.

A. On Friday the 20th about half past one I was called to his room.

Q. Who was present at that time?

A. Mr. Kelso, Judge Utz and Mr. D. A. Sachs and Mr. Rouff.

Q. You may state to the Court what was being talked of, what was said while you were in the room in regard to the matter or any matter connected with the Receivership of the M. Zier & Company plant at New Albany.

A. I know after I got in there they began discussing the contempt proceedings against Mr. Connor Receiver and Mr. Hester.

Q. Mr. Connor the Receiver appointed by this Court?

A. Yes sir.

Q. Of the M. Zier & Company plant?

A. Yes sir?

Q. Now you may state what was said.

A. Mr. Sachs was asking in relation to affidavits and to prepare the information and affidavits and Mr. Kelso says, "Who will make those affidavits'" I happened to look up at the time and he said, "Mr. Martin could you make them?"

Q. Who said that?

A. Mr. Kelso said that. Judge Utz answered for me and said, "I don't think it is his place to make them." Then Mr. Sachs said, "Why not you make them Mr. Kelso?"

Mr. Kelso studied a few minutes and said "I could make it as to Mr. Connor but not as to Mr. Hester." Then they got some volumes of law and were discussing the law on the contempt proceedings.

Q. Who was talking about the law of the case?

A. Mr. Sachs.

Q. In the presence of Judge Utz and Mr. Kelso?

A. Yes sir.

Q. Then did you retire from the room?

A. I was called down stairs.

Q. Was that all the conversation that you heard.

A. That is all yes sir.

Q. Did you hear any conversation at any other time on the part of Mr. D. A. Sachs in regard to the proceedings against Connor or Hester, or the Trust Company or Mr. Watts?

A. No sir, not Sachs.

Witness excused.

Charles D. Kelso recalled as a witness for the Government in rebuttal being duly sworn testified as follows:

Direct examination. Questions by Mr. LaFollette:

Q. Mr. Kelso you may state to the Court whether or not pending this controversy at New Albany Mr. Hester the attorney said to you that Mr. W. W. Watts was the man that Judge Anderson was after?

A. No sir, he did not.

Q. You may state whether you stated that he had so told you over at Sachs' office at Louisville.

A. I did not.

Cross-examination. By Mr. Fairleigh:

Q. If you said anything about that at all Mr. Kelso, will you state what you said?

A. I said to those gentlemen at Mr. Sachs' office that I had a talk with Mr. Hester on the car about this order and that I inferred that Judge Anderson was angry at Mr. Watts.

Witness excused.

Bertha L. Scott, a witness called on behalf of the Government in rebuttal being first duly sworn testified as follows:

Direct examination. Questions by Mr. LaFollette:

Q. Miss Scott you may state your name?

A. Bertha L. Scott.

Q. Where do you live?

A. New Albany, Indiana.

Q. Are you a stenographer?

A. Yes sir.

Q. Are you employed in the office of Mr. Charles D. Kelso?

A. I am.

Q. Were you employed in his office on the 19th, 20th and 21st of February last?

A. I was.

Q. Do you know Mr. W. W. Watts?

A. No sir.

Q. Do you know Mr. D. A. Sachs?

A. Yes sir.

Q. Was he at Mr. Kelso's office on Friday of that week and on Thursday?

A. On Friday, yes sir.

Q. He was there on Friday?

A. Yes sir.

Q. Do you remember whether he was there on Thursday?

A. I don't remember that he was.

Q You may tell the Court whether or not you as the stenographer in that office had dictated to you any orders or papers of any kind?

A. I did.

Q. You may state who gave you the dictation?

A. Mr. Kelso gave the dictations and Mr. Sachs offered suggestions.

By the Court:

Q. Mr. D. A. Sachs?

A. D. A. Sachs, yes sir.

By Mr. LaFollette:

Q. Have you examined this morning the copy of a pleading which begins: "Comes now the United States Tube Company by D. A. Sachs its attorney and respectfully represents to the Court," etc., and is signed "Respectfully submitted, United States Tube Company by D. A. Sachs, its attorney," and then has a jurat attached to it signed, "D. A. Sachs" and "Subscribed and sworn to before me this 20th day of February, 1903, Bertha L. Scott, Notary Public."

A. Yes sir.

Q. Hav you examined that?

A. Yes sir.

Q. And the orders immediately following that?

A. Yes sir.

Q. You may tell the Court whether or not that pleading on behalf of the United States Tube Company was dictated to you by Mr. C. D. Kelso in the presence of Mr. D. A. Sachs?

A. It was.

Q. You may state whether or not during the time that that was being dictated to you there was any suggestions or additional dictation made by Mr. D. A. Sachs?

A. There were suggestions.

By the Court:

Q. By whom?

A. By Mr. Sachs, D. A. Sachs.

By Mr. LaFollette:

Q. You may state whether you afterwards transcribed that in longhand?

A. I did.

Q. What did Mr. D. A. Sachs do in the way of reading it over?

A. I read it over to Mr. D. A. Sachs before I wrote it there on the typewriter.

Q. From your notes?

A. From my notes.

Q. Then after you transcribed it in long hand what did he do?

A. To the best of my recollection he read it over.

Q. State whether or not he signed it.

A. He signed it.

Q. State whether or not he swore to that before you.

A. He swore to it before me.

Q. You may state whether or not the orders that were made following that which begins: "And the application of said Receiver to be permitted to resign as such is now disallowed by the Judge of this Court for the reason that said Receiver in its said report and resignation openly and wilfully shows to the Court that it has violated the trust reposed in it by the Judge of this Court and has wrongfully, unlawfully and without the leave or permission of the Judge of said Court or said Court surrendered the possession of the property of which it is the custodian to Frederick D.Connor." State whether or not that order as it is copied in these pleadings was dictated to you on that same day?

A. To the best of my recollection it was.

Q. You may state to the Court what time in the day or what different parts of the day Mr. D. A. Sachs and Mr. Kelso made these dictations to you.

A. The dictations were made in the forenoon, I think near 12 o'clock, and I remained there until about one or half past one o'clock in the afternoon.

Q. You may state to the Court whether or not this dictation was made in the presence of Mr. D. A. Sachs.

A. What dictation?

Q. This one following the affidavit that he made? This subsequent dictation.

A. Yes sir.

Q. The orders that were made?

A. Yes sir.

Q. State whether or not he made suggestions and additions to that dictation, as to whether or not—

By Mr. Fairleigh: That question is objectionable. It is very leading.

By the Court:

Q. What if anything did he do with reference to making suggestions as to the orders that were made when they were dictated?

A. I can't say what suggestions that he made now but I know that he offered suggestions.

By Mr. LaFollette:

Q. You may state what other orders or writs or orders of any kind were made that afternoon if you can call to mind.

A. There were other orders made that afternoon.

Q. Can you remember of what character in substance?

A. I think that there was one in relation to the appointment of Mr. Kelso as Receiver and then there was a writ.

Q. You may explain that to the Court? What kind of a writ?

A. To the Sheriff.

Q. Do you remember in substance what that writ was to the Sheriff?

A. To take possession of the Zier property.

Q. You may state whether or not Mr. D. A. Sachs was present while that was being dictated to you.

A. Yes sir.

Q. What if anything did he do in connection with it while it was being dictated?

A. He heard it dictated.

Q. You may state whether or not you prepared that afterwards in longhand.

A. I did.

Q. To whom did you deliver them?

A. I just put them on Mr. Kelso's desk. I suppose he took them.

Q. About how late in the afternoon was it that the writ to the Sheriff was dictated to you.

A. It was at or near six o'clock.

Q. Mr. Sachs was there at the time it was dictated?

A. Yes sir.

Witness excused.

W. W. Watts, recalled, for the defendants, and examined by Mr. Smith, testified as follows:

Q. You heard Mr. Ruoff's statement in regard to meeting you and Mr. Sachs at the corner of Pearl and Spring Streets Saturday afternoon, about six o'clock on the 21st where he was standing waiting for a car? And you heard his statement in which he said Mr. Sachs said to him that he had been to the Zier plant and that he did not consider it worth more than $5000. Did this witness who testified meet you gentlemen there at that time?

A. I do not recall that he did and I don't think he did.

Q. Did he have any such conversation as he detailed in your presence or did Sachs make any such statement?

A. I think not.

Cross-examined by Mr. LaFollette:

Q. Were you with Mr. Sachs Saturday evening on the streets of New Albany?

A. I was at some time, but just at what time I do not remember.

Q. You were waiting for a car near that corner spoken of?

A. Yes sir, we were.

Q. And you and Mr. Sachs took a car at or near that point to go back to Louisville sometime Saturday evening?

A. Yes sir.

Both sides rested and this was all the evidence introduced before his Honor on this hearing.

(Petition of Receiver to Floyd Circuit Court. Introduced in evidence.)

IN THE FLOYD CIRCUIT COURT.

JANUARY TERM, 1903.

Jos. T. Ryerson & Son,
vs.
M. Zier & Company.

TO THE HONORABLE W. C. UTZ, *Judge of the Floyd Circuit Court:*

Frederick D. Connor, Receiver appointed by the United States District Court for the District of Indiana, intervening in the above entitled cause, respectfully shows to the Court:

That on the 11th day of February, 1903, by the consideration of the United States District Court for the District of Indiana, upon the petition of the Inland Steel Company, John C. Thurston and John Dey, doing business as Dey Time Register Company, he was appointed by said Court as receiver, with authority to take charge of all property of said M. Zier & Company and to hold the same in his custody until the further order of said Court.

That he has duly qualified as such receiver according to the requirements of the order appointing him, by filing his bond therein to the approval of the Hon. Albert B. Anderson, Judge of said Court, and is ready to assume control of the property of said M. Zier & Company as soon as the same is turned over to him by The New Albany Trust

Company, heretofore appointed as receiver in this cause by this Court; a certified copy of the order of the United States District Court is filed herewith and attached hereto marked exhibit "A."

Your petitioner therefore, respectfully prays that said The New Albany Trust Company be directed and required to immediately turn over to this petitioner all of the property, assets, books, moneys and other effects of said M. Zier & Company now in its possession and control and to immediately file with this Court its account in writing, showing the amounts of money collected by it and now on hand.

The petitioner further prays that said The New Albany Trust Company be discharged as such receiver herein.

FREDERICK D. CONNOR,
Receiver of M. Zier & Company.

STATE OF INDIANA, }
} *ss.*
County of Floyd. }

Frederick D. Connor, being duly sworn on his oath says that the matters stated in the foregoing petition are true in substance and in fact as he verily believes.

FREDERICK D. CONNOR.

Subscribed and sworn to before me this 14th day of February, 1903.

CHARLES B. SCOTT,
Clerk F. C. C.
By William F. Ruoff,
Deputy.

UNITED STATES OF AMERICA, }
} *ss.*
District of Indiana. }

I, Noble C. Butler, clerk of the District Court of the United States within and for said District, do hereby certify that the above and foregoing are, first, a full, true and complete transcript of the record in the matter of M. Zier & Company, bankrupt; second, a full, true and complete transcript of the record in the case of the United States against Charles D. Kelso and others, as fully as the same appear upon the records and files now in my custody.

Witness my hand and the seal of said Court at Indianapolis in said District, this 17th day of March, A. D. 1903.

NOBLE C. BUTLER,
Clerk.

[Seal.]

FILE COPY.

16 Orig.

Supreme Court of the United States.

In re DAVID A. SACHS.

TRANSCRIPT OF EVIDENCE.

P. C. BUNNEMACHER PRESS, LOUISVILLE, KY.

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IN THE

District Court of the United States

FOR THE DISTRICT OF INDIANA.

In the matter of M. Zier & Company, against whom a petition in bankruptcy has been filed.

UNITED STATES, vs. W. W. WATTS, AND D. A. SACHS.	Citation for Contempt.

Frederick D. Connor, a witness called on behalf of the government, being duly sworn, and examined by Mr. LaFollette, testified as follows:

Q. You may state your name to the Court.

By Mr. Smith: In order to save the question that Judge Miller spoke of, we desire to object. We understand your Honor has ruled on the question, but we want to save the question as to the introduction of any evidence after the filing of the response; in other words, upon the idea that the response has purged the contempt.

By Mr. LaFollette: I do not think it is necessary to argue that proposition.

Mr. Miller: We do not want to argue it.

The Court: You are objecting to the introduction of any evidence.

Mr. Smith: Yes, sir.

The Court: The objection is overruled.

Mr. Fairleigh: We want our exception reserved.

By Mr. LaFollette:

Q. Where do you reside?

A. My name is Frederick D. Connor; I live in New Albany, Indiana, Floyd County.

Q. You may state to the Court whether or not you are acquainted with M. Zier & Company—whether you know of that firm?

A. I am acquainted with them.

Q. Where was it doing business within the past year?

A. On the corner of Oak and Pearl Streets in the City of New Albany, Indiana.

Q. You may state if you were appointed a receiver of that concern by virtue of certain bankruptcy proceedings that were instituted in the District Court of this District?

A. I was.

Q. You may state about what time, if you remember, you received your evidence of appointment?

A. I think I received it on the twelfth day of February. I was appointed on the 11th and I got it the following day, I think.

Q. At the time that you were appointed, you may tell the Court who was in possession of the property of M. Zier & Co.?

A. The New Albany Trust Company as receiver under the Floyd Circuit Court.

Q. What steps if any did you take to get possession of the property?

A. About the time I received the order appointing me I also received a note from the clerk to defer any action until a hearing was had on the following Monday.

Q. Were you here on the following Monday?

A. No, sir.

Q. You may go on and tell what you did?

A. After that hearing, I think on the 19th of February, I received a copy of my original order of appointment, with instructions to proceed to the Trust Company and demand that the property be turned over to me. Subsequent to that, however, I had a notice that some arrangement had been made here by which they would turn the property over to me on the 15th or 16th—the 16th I think it was.

Q. You may state whether or not you had prior to that time filed a petition in the Circuit Court of Floyd County to have the property turned over to you?

A. I had.

Q. You had filed that?

A. Yes, sir.

Q. Was that prior to the arrangement made to have a further argument of the question here in this Court?

A. I think it was.

Q. Do you know what was done on your petition?

A. No, I do not. I do not think any action was taken on it. I did not get any order.

Q. You did not get any notice of any action?

A. No, sir.

Q. After that, you may go on and tell what you did about making demand on the Trust Company and whom you saw and what you saw?

A. On the 19th of February about nine o'clock in the morning, I think, I went to the Trust Company's office and presented a copy of my original order that I received from this Court, from the clerk, to the Secretary of the Trust Company, Fred. Sauer, and demanded the property. He stated that the Vice-President, Mr. Jewett, was not present, but would be in shortly and that he would act upon the matter. I waited there sometime and Mr. Jewett came in and I demanded of him the property, and he handed me a document he had received, a petition that he had made to the Floyd Circuit Court and on that a written statement to me, asking me if I could not delay the matter, that he had laid it before the Judge and the Judge had said orally, that he would like for him to hold it in his hands that he would like for him to hold it in his hands until he could render his account to that Court, which they would make out othe next day or shortly, but if I insisted, that he would turn it, the property, over to me as he had agreed to do in this Court. I insisted and he turned it over to me—gave me the keys.

Q. What he gave you there was the keys to the plant?

A. Yes, sir, the keys to the plant.

Q. If you know, what did that give you access to?

A. That gave me access to the building, the enclosure out there, the property of the plant, and the office books and safe, that was all.

Q. That was all that was turned over to you there at the Trust Company office?

A. Yes, sir.

Q. Just the keys to the plant?

A. Yes, sir.

Q. About what time in the day was that?

A. That was about half past ten in the moring.

Q. Of what day?

A. 19th.

Q. Do you remember what day of the week that was?

A. I think it was on Thursday.

Q. What did you do after receiving the keys about going to the place and going into the plant, if anything?

A. I took a gentleman named Norton, Mr. Joseph Norton, up there and put him in charge of it as custodian, unlocked the place and took him in and gave him the keys to the front door and told him to take charge of it for me.

Q. That was on Thursday forenoon, you think?

A. Yes, sir.

Q. During that day did your man that you put in charge remain at the place?

A. Yes, sir.

Q. Were you about there at any time during the day after Mr. Norton went in charge?

A. About four o'clock in the afternoon of that day, I took another man out there and put him in charge, that is took him inside and told him his duty and gave him the keys to take charge of it as night watchman.

Q. You arranged for a custodian both in the day time and at night?

A. Yes, sir.

Q. You may state whether or not you had any conversation during the time that the property was in your custody with either Mr. Sacks or Mr. Watts, the attorneys?

A. I did not.

Q. You did not have any talk with them?

A. I did not.

Q. Was Court in session, if you know, during that time, the Floyd Circuit Court?

A. I don't think it was—I am not sure about it.

Q. You may tell the Court, what, if anything, occurred in the way of any notices or writs of any kind being served upon you while you were in possession of the property?

A. About seven o'clock on Friday evening Mr. Kelso came to my house and I admitted him and took him back into the sitting room and he stated that he had come to notify me that he was appointed Receiver by the Floyd Circuit Court in place of the New Albany Trust Company and therefore demanded the surrender of the property of M. Zier & Co. and I refused to surrender or turn it over to him.

Q. You say that was about seven o'clock in the evening?

A. Yes, sir. He said, "very well, you obey your Court and I will obey mine." That is the substance of what he said.

By the Court:

Q. Who said that?

A. Mr. Kelso.

By Mr. LaFollette:

Q. Was that at your house?

A. Yes, sir.

Q. Did you go out of your house during that evening—

A. No, sir.

Q. —or did you remain at home?

A. I remained at home.

Q. Was there anything further occurred during the evening with reference to this property?

A. About eight o'clock, between eight and half past eight, the door-bell rang and I went there and found the sheriff, Mr. Raymond Morris, and the deputy sheriff, Mr. Claud Sitason. I admitted them into the hall and the sheriff proceeded to

read a writ to me, I suppose it was, he read the order and then read the demand that I turn the property over to him as sheriff; and he gave me the copies of those that are in the files.

Q. What did you do about turning over the property?

A. I refused to turn it over to him. He said very well, I will go and take charge of it and turn it over to Mr. Kelso, the Receiver.

Q. Did you go out with him?

A. No, sir.

Q. After giving you that notice, he and the deputy went away?

A. Yes, sir.

Q. Did you have any further notice or know anything about the property during that evening or night?

A. No, sir—well, I think my watchman notified me that they had come there and taken charge of it, put him out.

Q. You learned that from your watchman?

A. Yes, sir.

Q. When did you next go to take the property after that night?

A. I went back to it after I had been up here to Court.

Q. You may tell how long it was held, if at all, by the sheriff, or by Mr. Kelso, if you know?

A. I presume—I understood he turned it over to Mr. Kelso that night. And Mr. Kelso held it until the Monday following, the Sunday night or Monday. He was cited to appear at this Court.

Q. It was after that that you got the property back again?

A. Yes, sir; after the hearing in this Court I got the property back again. I got it on the next Saturday night following.

Q. You may state whether or not there were any proceedings in the Court on the days following the appearance of the sheriff at your house, that you know of?

A. I could not say exactly; I saw a number of gentlemen going into the Courthouse in different places there.

Q. Did you yourself have any talk with the Judge of the court or with any of the attorneys about the matter?

A. I think not.

Q. You may state whether or not Mr. Sachs and Mr. Watts, the two attorneys charged here, were at New Albany on Friday or Saturday, following the time the property was taken from you, if you know?

A. I saw them there on the Sunday following and the Monday, I think. I saw them on Monday following anyway, and I think on Sunday too.

Q. Did you know personally of the proceedings that were instituted to secure the writ that was given to the sheriff to take the property from you?

A. No, sir.

Q. You did not know about that?

A. No, sir.

Q. Did you have any talk with Henry Jewett after the morning when he gave you the keys?

A. No, sir; I believe not.

Q. Was there any of the funds belonging to the firm of M. Zier & Co., turned over to you, moneys or credits, or anything of that kind?

A. Not at that time.

Q. There was no conversation about that at that time, was there?

A. No, sir.

By the Court:

Q. When did you get possession of the books of this firm?

A. I did not get possession of the books and safe until after I came back from this Court, after Mr. Kelso had abandoned the property.

Q. Did you examine the books?

A. Yes, sir.

Q. Do you know when the receivership suit was commenced in the State Court—do you remember the date?

A. I think it was the 30th day of December.

Q. Did you examine the books to ascertain whether or not any payments were made by the alleged bankrupt about that time?

A. Yes, sir.

Q. What did you ascertain about that?

A. I found, I think, on the 29th of December, $3100 was paid to Ryerson & Sons—that is, orders on another company, the New River Lumber Co. that owed Zier. He gave Ryerson & Son orders, I think, for about $3100. or something.

Q. Who were Ryerson & Son—what if anything did they have to do with the receivership?

A. I do not know; they are some kind of iron dealers in Chicago.

Q. They were plaintiffs, were they not, in the suit in the Floyd Circuit Court?

A. That I don't know except what I saw in the papers.

Q. What else did you find was paid out about that time, if anything?

A. I found on the 30th of December, an entry in the Journal that M. Zier paid C. L. & H. E. Jewett $600 as attorneys' fees and expenses for M. Zier & Co.

Q. What was the date of that payment as shown by the books.

A. The 30th day of December.

Q. What further payment did you find had been made on that date?

A. I found where they had paid C. L. & H. E. Jewett $9000. to be delivered to Minnie M. Zier, sister-in-law of M. Zier, the principal in this company.

Q. Did you discover who paid that money to the Jewetts, that $9000.

A. I think it was M. Zier.

Q. Did you discover where M. Zier got the money and how?

A. I discovered from the books.

Q. What did you discover?

A. From the cash book Mr. Zier drew $400. on the 21st day of October, cash from the bank and charged to Expense.

Q. Did you find the orders by which he drew the money out of the corporation?

A. I found the check.

Q. How was it done, by padding the pay-rolls?

A. That first item of $400 was charged to Expense. And afterwards in another handwriting written over it, was "this money was paid to Minnie M. Zier by M. Zier on account." That entry was made in a different handwriting in different ink. Then I found on the 28th that he drew some $1800 charged to payroll and the payroll was $824. The whole amount was charged to payroll and there was an entry over that in another handwriting, saying, "$1000 of this was paid to Minnie M. Zier by M. Zier on account." And I found on every pay day following that up to the 20th of December, that he drew $1000. more than the amount of the payroll with that same kind of entry interlined in the books.

By Mr. LaFollette:

Q. How was that?

A. I said every pay day after the 28th of October he drew $1000. more than the pay roll.

Q. How frequently were the pay days?

A. Every week; every Saturday, I think it was. The total sum of those overpayments or overdrafts was $8600.

Q. Is that an additional sum of money other than the $9000 you referred to?

A. No, sir; that is the same $9600. I have here the checks.

Q. The dollars $9600 stated before, $9000 in one item $600 in another?

A. Yes, sir; these checks show they were drawn for the payroll and they are charged on the books to payroll.

Q. The way the $9000 or the $9600 in fact, was taken out of the concern was by its appearing on the books that it was $1800 each payroll?

A. Yes, sir.

Q. When as a matter of fact the payroll itself was $800 and the $1000 additional to be sent to Minnie M. Zier?

A. That was all charged to payroll by the bookkeeper originally and subsequently someone had written over the items, "$1000 of this amount was paid to Minnie M. Zier by M. Zier on account."

Q. Do you know, or have you learned when that entry was made on the books showing that part of it was paid to Minnie Zier and who entered it?

A. The bookkeeper was Harry Ury; he made the original entry and the subsequent entries or interlineations, I do not know who made them. The sum seems to have been charged on the books on the 30th of December, exactly $9600., but these accumulations came in that way from the 21st of October to the 30th of December.

Q. One of these checks is for only $400?

A. That is the first one he drew and that he charged to expense without any itemized statement.

Q. Was there any additional entry made in regard to that or did it still stand on the books as charged to expense?

A. He added to that same amount that "this amount was paid to Minnie M. Zier by M. Zier on account."

Q. On October 25th the check was for $1827.?

A. That is $1000 over the payroll.

Q. The next one is dated November 1st, and is $1931?

A. That is $1000 more than the payroll.

Q. The next one is dated November the 7th and is $1819? Was that $1000 in excess of the payroll?

A. Yes, sir.

Q. The next one is dated November 15th, $1855?

A. That was $1000 more than the payroll.

Q. And the same entry in regard to it.

A. The same entry all along.

Q. And then each of those subsequent ordersfollowing Nov. 22, Nov. 29, Dec. 6, Dec. 13, Dec. 20—

A. Just a week apart.

Q. And Dec. 28th—

A. No, it stops—

Q. —on December 20th. Yes, with December 20th. And here is another item dated Oct. 28th, a check from $400.

A. Yes that was charged to expense.

Q. That was the same as October 21st?

A. Yes sir.

Q. Charged to expense, but afterwards an entry saying it was paid to Minnie Zier?

A. Yes sir.

By Mr. Miller;

Q. This $9600, is that the entire sum that was paid out, or is that in addition to what was paid Mr. Jewett?

By Mr. LaFollette: It includes the amount, am I right?

The Court: $9600 was paid at the time, $600 for their attorneys fees and $9000 to hand to Minnie Zier, of Minneapolis. The $9600 is charged,—

Mr. Miller: Is that the total?

The Court: And this testimony just given shows how Zier abstracted that money from the funds of the company.

Mr. LaFollette: I think that these checks that have been identified by Mr. Connor and explained by him should go in evidence.

The Court: They can go in evidence, but they must be preserved hereafter and if they go into the record they must go by copy; those things are things that the court will require hereafter.

Mr. LaFollette: Possibly they are referred to explicitly enough by the evidence and in view of that fact probably Mr. Connor had better keep them.

Q. Referring to this matter of the books, since it has been suggested I want to ask you I believe you state that up to the time the property had been taken from you by the sheriff you had not yet had the books?

A. No sir.

Q. Tell the court why you had not?

A. On the morning of the 19th when I got the keys to this plant from Mr. Jewett, Mr. Zier came into the Trust Company and I asked him if he would unlock the safe for me so that I could get possession of the books. And he declined to answer. I asked him another question or two about a car load of stuff that was there about switching on to his track, and he would not answer that and I went over and sat down by the desk with him and I told him this was a matter—

Mr. Miller: I do not want to be objecting, but unless the District Attorney will say that he expects to connect our client with Mr. Zier, I do not think this evidence is competent.

The Court: I do not think the conversation between this witness and Mr. Zier is competent, but I do think that the fact that this witness is receiver of this court and as receiver demanded that he be given the books and papers of this corporation and refused and the fact that subsequent to that time the books and papers were given in custody of another party and after that the books were found to be interlined, those facts are competent.

Mr. Miller: They are not competent as to us, unless we are conne ted with it.

The Court: Certainly your client will not be responsible unless connected with it.

Mr. Miller: Ordinarily the rule is to require the district attorney to say that he expects to connect the defendant.

The Court: He has said that in his information.

Mr. Miller: He does not say so. He charged us with simply resisting the execution of an order and taking property from the hands of a receiver.

The Court: However that may be, I will say now, of course, Mr. Sachs and Mr. Watts will not be held unless the evidence connects them with this unlawful conspiracy which was carried out against this property in the possession of the receiver.

Mr. Miller: He don't even charge us with conspiracy.

The Court: I do.

Mr. Miller: He don't.

The Court: The only question here is are the defendant's counsel right in their point, whether or not these defendants took part in this unlawful wresting of this property from the hands of the receiver of this court. That is the question here. Unless they are shown to have aided, abetted, counseled, or encouraged or some way engaged in it, they are not responsible for it, but if they did aid, counsel, abet, or encourage, they are responsible just as much as those who did it.

Mr. LaFollette: And the reason I asked these other questions—I don't care about the conversation, I simply want the incidents and the various steps as we proceed with the matter.

The Court: And the court rules that the circumstances are competent.

Q. You may state whether or not in response to the question you asked about the opening of the safe, whether it was open?

A. It was not.

Q. You may state whether or not during the time you had possession of the property, Thursday and up to Friday night, you had during that time been able to have the safe opened and examine the books of M. Zier & Company?

A. I had not.

Q. You may state whether or not there were any papers in the desk in the office of the company or whether you had a key to the desk?

A. I think I found the keys to the desk in the safe after it was opened some time after Mr. Kelso had it.

Q. You may state whether or not you were able by virtue of any desks or places that you did have access to

find any record of the proceedings or business methods of the concern?

A. I was not.

Q. You may state whether or not, if you know, there were any books taken away from the plant during the time that the property was out of your hands until it came back to you again?

A. I could not tell that only from the testimony I heard in court here.

Q. You do not know personally?

A. No sir.

Q. Except that you learned that some papers were taken away?

A. No sir.

Q. Do you know whether the books were taken away from the safe during that time?

A. I could not tell you.

Q. You have not the books here with you?

A. No sir.

Q. When you got the property back was after you had been up here and probably a week had elapsed and then you had the safe opened?

A. Mr. Zier opened it for me after we went back from the court.

Q. That was the first time you had access to the safe?

A. Yes sir.

Q. Was that the first time you had seen the books?

A. Yes sir.

Q. You may state whether or not it was after that that you got those checks you have here?

A. Yes sir it was since that time that I got these checks.

Q. Who gave them to you?

A. I found them myself.

Q. Where were they?

A. They were in an old box in the vault, an old vault, back in the corner of the office.

Q. Where were the books when you got the safe open? Where did you find them?

A. They were in the safe.

Q. How many books were there in which the accounts of the concern had been kept and what system of book-keeping did they have?

A. They had a cash book and a journal or day book journal. I dont think they kept a regular day book and a patent ledger, that is, a locked back to take sheets out and put them in as the case required.

Mr. Miller: It seems to me that this is too remote to have any bearing on this question here. The district attorney

may be trying to find evidence against somebody else, but it does not seem to me that this competent against us.

The Court: What was the last question?

Mr. Miller: It was as to the method of bookkeeping of M. Zier & Co.

The Court: Has he answered the question?

The Reporter: Yes sir.

The Court: There don't seem to be anything to rule on now.

Q. You may state to the court whether or not since you have taken possession of the concern since you were up here before this amount of money which was transferred from the concern, by these excessive vouchers or checks have been repaid to you as receiver of the concern?

Mr. Miller: I believe for the purpose of cutting this short, I will object to that; I do not see how that can affect my client.

The Court: I will overrule the objection. I do not know what the purpose is.

Q. This $9600, has it been paid to you?

A. I received from Col. Charles L. Jewett $534.84 of the $600 that he got of that money for fees and expenses but the balance of it I have not received.

Mr. Fairleigh: We move to strike out all of this evidence as to preferential payments made anterior to these proceedings. I do it in this form to save time.

The Court: Overruled.

Mr. Fairleigh: Give us an exception.

Henry E. Jewett, a witness called for the government, being duly sworn, and examined by Mr. LaFollette:

Q. State your name to the Court?

A. Henry E. Jewett.

Q. You reside at New Albany?

A. Yes sir.

Q. Are you connected with the New Albany Trust Company?

A. Yes sir, vice president.

Q. Did you have active management of the company during the time that it was receiver for M. Zier & Co.?

A. Yes sir, I assisted in the management of the company.

Q. You are acquainted with Michael Zier?

A. Yes sir; I have known him probably ten or fifteen years.

Q. And the "company." Did you know what was known as M. Zier & Co.?

A. Yes sir.

Q. Do you know who constituted the firm besides Michael Zier?

A. Do you mean before the incorporation?

Q. It is an incorporated company, now?

A. Yes sir.

Q. Do you know who the stockholders are,—are there many of them?

A. I think there are only four, Michael Zier, and his brother, now dead, Edward Zier, Minnie Zier, the wife of Edward Zier, and H. E. Urey, I do not know whether his name is Harry or Henry. He goes by the name of Harry; it is H. E. Urey.

Q. Minnie Zier is the widow of Edward Zier who was one of the stockholders in the M. Zier and Company concern?

A. Yes sir.

By the Court:

Q. Her husband was a stockholder?

A. Yes sir.

Q. And she is now a stockholder?

A. I think both were stockholders at the same time.

Q. Was she a stockholder before her husband's death in her own right?

A. I am only stating my understanding, but I understood both became stockholders in the corporation at the same time.

Q. Do you know whether or not she succeeeded to the shares her husband owned in his life time?

A. I do not know.

By Mr. LaFollette:

Q. Did you have any personal knowledge of the management of the business of M. Zier & Co. before its failure or before suit was brought in the Floyd County Circuit Court appointing a receiver?

A. None except in some legal business they had; as that I had been consulted by Mr. Urey the secretary, such as claims they had, liens.

Q. You are acquainted with the defendants here, Mr. Sacks and Mr. Watts?

A. Yes sir I have known Mr. Watts a number of years and I have known Mr. Sachs a short time.

Q. How long have you known Mr. Sachs?

A. I do not remember to have met Mr. Sachs until he came to New Albany after Mr. Watts had been to Indianapolis on the hearing on the 16th. I may have met him before but I have no recollection of it.

Q. How long have you known William W. Watts?

A. Probably ten years.

Q. Had he been practicing in the New Albany Circuit Court?

A. Not to my knowledge, but he had a collection business, a commercial law business in Louisville, and I had had some business with him in that way.

Q. Did you know personally of the institution of the proceedings of Ryerson & Son against M. Zier & Co.?

A. Yes sir, I appeared in that action.

Q. In what capacity did you appear?

A. I appeared as attorney for M. Zier & Co.

Q. You may state to the court whether or not you had had any conversation with W. W. Watts prior to the commencement of that action?

A. Yes sir I had.

Q. About how long before the action was instituted did you talk with Mr. Watts?

A. The morning it was filed.

Q. Just that morning?

A. Yes sir.

Q. What time in the day was it filed?

A. In the afternoon.

Q. You may state to the court, if you know, whether or not the petition that was filed in the Circuit Court by Ryerson & Son was prepared before you had the talk in the morning with Mr. Watts or whether it was prepared after the conversation.?

A. No it was prepared afterwards, I am sure; because Mr. Watts said he would prepare it and file it.

Mr. Miller:

Q. Did he say it was prepared afterwards?

A. I feel confident it was. I cannot say I saw it prepared.

Q. You may state to the court whether or not you had talked to Michael Zier, representing M. Zier & Co., before you had the conference with Mr. Watts about his financial condition?

A. Yes sir.

Q. How long before.

A. It had been several days; I do not remember just how long.

Q. You may state if you learned in your interview with him that he was insolvent?

A. I understood he was not able to pay everybody and was at least threatened with insolvency.

Q. And what was said by Mr. Watts in reference to it at the time you had the conference on that day?

A. I could not remember what was said as to his insolvency. Mr. Watts had this claim.

Q. How much was the claim, do you know?

A. About $15,000.

Q. Do you know then that there had been a recent payment on it?

A. No sir, I knew knowing of those payments to Ryerson.

Q. You did know about them? Had not Zier ever said anything to you about what payments he had made to Ryersson?

A. No sir, not to my recollection; I don't think I had ever heard of that.

Q. Was the proceedings instituted the result of an agreement or understanding between you and Mr. Watts, you representing M. Zier & Co. and he representing Ryerson & Co., that the proceedings should be instituted and that they should take the course that they did? Had that all been canvassed before the papers were filed?

A. Yes sir, I understood Mr. Watts would file a suit and apply for a receiver and that we would appear for Zier and consent to the receiver being appointed.

Q. Were you to do that without the issue of any process?

A. I do not think there was anything said about that. The process was issued; that was my understanding.

Q. There was not any ten days' time taken?

A. No sir, it was issued and served and appearance entered at the same time.

Q. So that the proceeding was instituted and apearance entered to it and action taken on it by the court the same day?

A. The same day.

Q. And that had been agreed upon in the morning when the statement had been made by Mr. Watts that he would prepare the petition?

A. Yes sir; we agreed to consent that the receiver should be appointed.

Q. Had you at that time a list of the creditors of M. Zier & Co.?

A. I had not.

Q. Do you know whether or not Mr. Watts had?

A. No sir, I don't know whether he did; I don't think he did.

Q. You may state whether or not you had any talk with the judge of the court prior to the filing of the petition?

A. I do not know that I did; I may have said a word that I would have some proceedings in his court; that is the rule we had there; the court was not in session.

Q. It was during term time?

A. No sir, the receiver was appointed in vacation, and that is the reason I sent word to the judge or telephoned that

there would be some proceedings taken in his court. I am sure I did not say what it was.

Q. It was during vacation that the action was taken?

A. Yes, sir.

Q. Had you talked with Mr. Watts about having the Trust Company appointed receiver?

A. Yes sir, I think I made that suggestion myself; I was interested in the Trust Company and naturally would.

Q. Had you known at that time about the payments that had been made to your firm by M. Zier and Company for Minnie Zier?

A. Yes sir I knew of that payment.

Q. Did you talk with Mr. Watts about that?

A. No sir.

Q. Do you know whether or not by anything he stated to you, whether he knew of the payments that had been to Minnie Zier by the Company?

A. No sir, I don't there was anything said about it in any conversation we had.

By the Court:

Q. You don't think, do you know?

A. That is my recollection, that there was nothing said about Minnie Zier at all in our conversation.

Q. The payment had just been made? that day or a day or two before?

A. Yes sir.

Q. Did he come there to consult you about the receivership about placing the company in the hands of a receiver?

A. No sir; the agent of Ryerson was with Mr. Watts; they had determined on the receivership as I understood it before I saw them or that some proceedings had to be taken.

Q. Did you know at the time or times that these payments were made, the manner in which the entries were made on the books of M. Zier & Co. as to how the money was taken from the concern?

A. No sir, I had never seen the books of M. Zier & Co. I did not know anything about how the payments were made.

Q. Did the bookkeeper of the concern ever consult you about the method of making entries in their books?

A. The day the receiver was appointed, those entries were made on that day and I knew the entry on the journal of the payment of this money; it was paid some days before that; I knew of that payment.

Q. Do you mean the entry that was made for the whole $9600?

A. For the whole $9600.

Q. That entry was made immediately preceding the appointment of the receiver in the Circuit Court about that day or the day before?

A. No sir; it was made the day the receiver was appointed. I think the day the receiver was appointed.

Q. Did you learn then when that entry was made of the $9600, as to how the entries had been mad on the books from time to time as the moneys were paid each week?

A. I am not positive that I saw that entry; I learned if my recollection is right that that money had been charged to Mr. Zier as treasurer, that there was an account on the ledger, M. Zier, treasurer, and that this money as it had been paid over to him had been charged each time had been charged to M. Zier, treasurer.

Q. Did you learn then that it had been entered on the books as a charge to the pay roll, that it appeared that it was a pay roll charge?

A. No sir; I never knew that until Mr. Connor showed me the checks on Sunday.

Q. Since he got possession of the books?

A. Yes sir.

Q. You never knew it before?

A. I never knew it until that day.

Q. Did you know or have you learned how the entries came to be made in the books showing the $1,000 of this amount each week was paid to Minnie Zier when it had been originally charged up to the payroll?

A. I do not know anything about that?

Mr. Miller: I want to object to that.

The Court: He has answered that he don't know anything about it.

Mr. Miller: I know that, but he is taking up time; he certainly don't expect to prove that our client had any knowledge of the manner of bookkeeping of M. Zier & Company. He is doing this for some other purpose. I do not object to the purpose, only that he is taking our time in doing it.

The Court: I think myself that these matters are competent; it is hardly necessary for me to tell the reason why just now. I will say, however, that the question, as I understand it, for this court to try is this: There is no question that the receiver of this court went down and took possession of this property and took it away from the possession of the receiver of this court. This court holds that there is no question that that is illegal, and the question is what connection had these defendants with that proceeding. Now I propose to allow the district attorney to show what kind of a proceeding that was; the circumstances surrounding it and any citation or any transaction which might account for this marvelous effort on the part of the people to retain possession of the books of this company after the receiver of this court had made such an energetic effort to get hold of them.

Mr. Miller: In other words, the Court will allow as against these parties, without any statement by the district attorney that he expects to connect them with it, these matters to be put in as evidence against Mr. Sachs, for instance, the manner in which the books of this concern were kept, and what Mr. Jewett knew about that fact, a month or two months before Mr. Sachs ever had any connection with it.

The Court: It may be a month or so before Mr. Sachs had anything to do with it, but Mr. Watts had to do with it all the time. Mr. Watts brought the suit. He was the adviser of the Trust Company who had charge of the books when these interlineations appear to have been made, and the evidence I think is competent.

These defendants when they come to present their case and claim that they acted innocently in this entire transaction—I am going to find out if I can whether they have.

Court here adjourned until to-morrow morning at nine o'clock.

TUESDAY, MARCH 10th, 1903.

MORNING SESSION.

The court met at nine o'clock. Present the same as on yesterday.

The direct examination of the witness, Henry E. Jewett, was resumed as follows, questions by Mr. LaFollette:

Q. You said that you didn't know about how the entries were made in the books of M. Zier & Company as to the method of payments to Minnie Zier, from the first entry of its appearing as a payroll?

A. No, I know nothing about that. I don't believe I ever saw the original entry.

Q. You have seen it since then?

A. No sir.

Q. Haven't you seen the books since Conner got possession of them?

A. No.

Q. You have never seen the entry—the original entry?

A. I don't remember of seeing the original. My impression is I did not.

Q. Were the checks that were drawn by M. Zier & Company paid through the trust company or through the bank?

A. Through the bank.

Q. You had nothing to do with that?

A. Not before the receivership. We had nothing to do with M. Zier & Company's affairs before the receivership.

Q. Well, did you know, prior to the institution of the proceedings by Ryerson & Son that the payments were

being made by M. Zier & Company to Minnie Zier, of $9,000, and to Ryerson & Son, of $3,100.

A. I didn't know about the payment to Ryerson. I knew that payments had been made to Minnie Zier.

Q. You may tell the Court how the payments were, handled, they being made each week to you of $1,000, or to your firm—did you deposit that money each week or remit it?

A. They were not paid to our firm each week. The money was paid to us practically all at one time; possibly on two days; I haven't got the dates, but just before the payment to Minnie Zier. The money was brought to us altogether.

Q. Well, did you know what Mr. Zier did with the one thousand dollars that he retained each week?

A. No, I did not.

Q. It was not paid to you in weekly payments, then?

A. No.

By the Court:

Q. You say it was paid to you in one or two payments?

A. Yes, sir, about all the same time.

Q. Well, which one or two payments?

A. Two payments.

Q. How was it divided?

A. Well, it was all paid except $2,100, I think the first day; and the next day, or the day after, Mr. Zier brought the other $2,100; that is the way I remember it.

By Mr. LaFollette:

Q. And how soon after it was paid to you was it remitted, if it was remitted at all by your firm, or was it deposited at New Albany?

A. It was deposited at New Albany in our account in bank, like any other account that was received, and my brother took the check to Mrs. Zier and paid it.

By the Court:

Q. Where?

A. Chicago.

By Mr. LaFollette:

Q. Was the check delivered, as you understand it, in Chicago?

A. That is my understanding.

Q. You understand that from the fact that he went to Chicago about the time that it was taken out of bank?

A. I was not managing that part of it; I really know that—

Q. (Interrupting.) How long was that before the institution of the proceedings in the State Court by Ryerson & Son?

A. It was just a few days. Probably the 26th or 27th of December.

Q. You may state if Ryerson & Son or their agent or any one representing that company came to New Albany immediately after that payment had been made up in Chicago to the agent of Minnie Zier?

A. The agent of Ryerson & Son, Mr. Jackson, came on the 30th of December.

Q. When he came did Mr. Watts come with him?

A. Yes sir they came, but I saw them before they came to New Albany, as Mr. Watts telephoned me Mr. Jackson was at his office and called me to Louisville; that is where he asked me about appearing to Mr. Zier in the receivership.

Q. When you first met them it was in Louisville?

A. Yes sir.

Q. In response to a telephone communication from Mr. Watts?

A. Yes sir.

By the Court:

Q. When was that?

A. That was the 30th; the day the receivership was filed.

By Mr. LaFollette:

Q. That was the same day it was filed that you went over to Louisville in the morning was it?

A. In the morning.

Q. Of that day?

A. Yes.

Q. In that conversation was there anything said about this payment that had recently been made by Zier & Company to Minnie Zier?

A. No sir, there was nothing said about that.

Q. Was there anything said about payments having recently been made to Ryerson & Son of $3100?

A. Not to my recollection; I would say there was not; what I was called over for I understood was to see whether I would appear for Zier in a receivership suit?

Q. Was the form of suit talked about between you and Mr. Watts at that time? Did you talk about any other kind of proceeding than the one you brought?

A. No, my understanding was that the determination had been arrived at to bring a suit for a receiver in the state court.

Q. What was said that induced you to reach that inference that it had been decided on?

A. Well that is hard to say. I just know there was nothing else said.

Q. Wasn't there any talk had between you and Mr. Watts about the probabilities of there being bankruptcy proceedings?

A. Not at that time.

Q. Well was there then at any time?

A. I don't know that there was unless it was after this receivership here.

Q. I mean before then?

A. No, I had no discussion with Mr. Watts about the bankruptcy matter. I want to say in explanation of my not discussing the matter further with him, you understand my brother had seen the Ryersons and I knew that, and I did not consider it any part of my duty to do so.

Q. So the matter of the kind of suit had been talked about before, you think?

A. I supposed it had. Yes sir.

By the Court:

Q. Well when you agreed to appear for M. Zier & Company, and have the receiver appointed, you knew then that your brother had been to Chicago to deliver to the agent of Minnie Zier this $9,000, didn't you?

A. Yes, sir.

Q. He was absent on that mission, was he not?

A. He had been at Chicago, and I don't think was in Chicago at that date.

Q. He had not yet returned to New Albany?

A. No, he had not.

By Mr. LaFolette:

Q. Was there anything said by Mr. Jackson, the agent of Ryerson & Son, about his conference with Mr. Jewett, your brother?

A. He spoke of meeting him there.

Q. Did he say anything about the fact that there was to be a suit brought as the result of that conference, and that he had learned from your brother, Colonel Jewett, that you both would appear for M. Zier & Company?

A. That was my understanding, that he knew that when he came that the property was to be put in the hands of a receiver of the State Court.

Q. Well, now wasn't there at that meeting some conversation between you, as lawyers, about the possibility or probability of some other creditors coming in and instituting bankruptcy proceedings, if you commenced this proceeding?

A. I don't know that there was; if there was I don't remember it; I wasn't there only a short time; as I say, I had not made the arrangement.

Q. Do you know why you went over there then?

A. I was informed Mr. Jackson was there?

Q. I know, but you had talked over the telephone you say? that is you had a communication from Mr. Watts by phone to you?

A. Yes.

Q. Now if it had only been a matter of asking you whether you would appear for M. Zier & Company that could have been answered over the phone couldn't?

A. That could have been answered over the phone.

Q. Do you know why it was not?

A. No, except that Mr. Watts wanted to talk about this receivership matter.

Q. Well if as you say the matter had been determined before communicating with you, about the form of the suit, and you didn't talk about that because it had been so determined, and he only wanted to know whether you would appear for Zier, and that could he asked over the phone, now can you call to mind any reason why you went over to Louisville?

No, I went to Louisville because Mr. Watts called me up and said Mr. Jackson was there, and I understood that the receivership suit was to be brought; Mr. Watts talked with me about the form of the complaint, form of the proceeding under our statute for a receiver; and talked to me about who would be the receiver.

Q. Now as fully as you can you may relate all that was said by Mr. Watts to you, and you to him, in that conversation just as fully as you can, Mr. Jewett?

A. Well I could't undertake to repeat what was said.

By the Court:

Q. Well you must undertake to tell what was said.

A. I will do it as fully as I can. I was trying to go over in my mind what had occurred. The telephone message came tolerably soon after I got to my office at nine o'clock, and my recollection is Mr. Watts told me over the telephone —whoever telephoned, I don't know whether it was him or someone in his office; but my recollection is it was Mr. Watts; I remember his voice—that Mr. Jackson was there, and I told him I would come over, and I went. I got there probably in an hour, and Mr. Watts and Mr. Jackson were there, and he introduced me to Mr. Jackson, and Mr. Jackson spoke of meeting my brother in Chicago, he having been at the office of Ryerson & Son; and Mr. Jackson talked something about the liabilities and assets of the concern. Do you want me to tell what was said about that?

By Mr. LaFollette:

Q. Yes, what was said about that?

A. My recollection is that they had statements or copies of statements that Mr. Zier had given, and it showed his estimate of the assets at something over $50,000, and the liabilities about $65,000; my recollection of that statement was that the assets were either 55 or 58, thousand dollars; I didn't prepare that or work on it, and I don't remember accurately about it, and Mr. Jackson—

The Court: Speak louder.

The witness continuing: I was trying to remember whether he talked about the state receivership or not.

By the Court:

Q. Is he a lawyer?

A. I thought at the time he was, and I am not sure, Your Honor, whether he is or not; he is employed by these people, and I am not sure but he is a lawyer; but I think he has charge of their collections probably; and Mr. Watts asked me whether we had a statute about appointing a receiver for an insolvent corporation, and asked me about the form of the complaint and some details of that sort, and he asked me about who would be the receiver, who would be a proper party, and I suggested the New Albany Trust Company, and stated that I was interested in it, and he asked me about representing the receiver, and I told him that would be all right; that was the rule of the trust company.

By Mr. LaFollette:

Q. That is he desired to be the attorney for the receiver?

A. After it was appointed, Yes sir.

Q. He was also the attorney for Ryerson & Son, wasn't he?

A. Yes, he had their claim in his hands at that time as I understood.

Q. Did you and he talk together about the propriety of the attorney for the principal claimant, or at least one of them, being also the attorney for the receiver? Was that subject talked about?

A. No, nothing was said about it.

Q. So that matter wasn't mentioned at all, you think, about the propriety of it?

A. No; no, I am not sure of that.

Q. Did you talk with him when he asked you about the statute of Indiana in regard to the appointment of a receiver for insolvent corporations, and in a general way about insolvency, did you mention the fact that the statute provided for assignments, and did he say anything about that?

A. Well, if he did I don't remember it.

Q. Don't you remember that he said that what they wanted to do was to have a proceeding that would avoid if possible subsequent bankruptcy proceedings?

A. No, he didn't say that to me.

By the Court:

Q. What was the answer?

A. No, he said nothing of that kind to me.

By Mr. LaFollette:

Q. And you said nothing about assignments, about that statute, when he talked to you about the Indiana statute?

A. No, I understood him to say that they had agreed about the receivership.

By the Court:

Q. That who had agreed?

A. That my brother and the attorneys for Ryerson at Chicago.

Q. Was there anything said there about the steps that were to be taken following the appointment of a receiver?

A. Yes, we talked about operating the plant.

By Mr. LaFollette:

Q. You may state pretty fully what was said about that?

A. Well, the details about the operation were not gone into; it was merely stated that in the petition and in the order they would ask the court for an order to continue the operation of the plant.

Q. Had you talked with Judge Utz about it before going over to Louisville?

A. No, I never mentioned it to Judge Utz in any way.

Q. Then if the agreement had been made as you indicate it was, that a receiver should be prayed for, while your brother was in Chicago, in conference with Ryerson & Son, it is hardly likely that you would have been called over to say that you would appear? That also had been agreed on before.

A. I did not mean to indicate that it was whether I would agree to appear or not; it was about entering my appearance and having the suit filed.

Q. Really, it was a conference about methods to be followed?

A. About arranging for the suit.

By The Court:

Q. To carry out the agreement that was made in Chicago?

A. That was my understanding of it.

Q. Where did you get your information about it?

A. From my brother.

Q. Before he went to Chicago?

A. No, he informed me while he was in Chicago.

Q. By letter?

A. No he called me up over the telephone and told me he had seen Ryerson.

Q. Where was he when he called you by phone?

A. In Chicago.

Q. So you had a conference with him from New Albany to Chicago as to the plans that were adopted, and that you were to appear for M. Zier & Company and that there was to be a receivership?

A. And consent to a receivership.

Q. Had you in the meantime talked to Michael Zier about it, or did you at any time talk to him?

A. I talked to him after I had this message from my brother; I hadn't talked to Mr. Zier a great deal; in fact I hadn't had charge of a great deal of that business in our office up to this time when my brother went away, but when I heard from my brother I called Mr. Zier in and told him that Ryerson & Son were going to file an application for a receiver.

Q. What did he say about it?

A. He was satisfied, agreed that that was the best arrangement.

Q. He was leaving that to you? Did you tell him that your company would probably be the receiver?

A. I don't know that I did. My impression is I did not, because that was not a matter that Mr. Zier was concerned about.

Q. Did you learn from him that he had already talked to Col. Jewett about it before his going to Chicago, and that he was pretty fully advised about what was going to be done?

A. I knew that he had authorized my brother to make arrangements at Chicago with Ryerson to settle this business if he could; I knew that in a general way only by seeing him in the office.

Q. After the suit was filed did you have any active connection with it in appearing for Zier & Company as to the proceedings in court?

A. You mean after the first day?

Q. After this conversation you had at Louisville?

A. I appeared when the suit was filed.

Q. Following that did you have active connection with the various steps that were taken?

A. Not with the suit; at the time the creditors met I took no part in that except on behalf of the trust company; I did make some suggestions.

Q. Do you know how it came about that the creditors' meeting was had?

A. That was Mr. Watts's plan to have a creditors' meeting; he made that suggestion.

Q. When was that suggestion made and where?

A. My recollection is it was made at the time the order was entered or talked about.

Q. In court?

A. Yes or right soon afterward.

Q. Well was there any statement made to you or in your presence about why they should have a creditors' meeting? What the purpose if it was?

A. It was to have the advice of the creditors' in administering the estate.

Q. Was there anything said about getting them into court by that method?

A. Not to me.

Q. Was there anything said about calling them in and having them to agree that it should proceed in a general way on the plan of bankruptcy proceedings?

A. No I never heard that statement made until it was made in court up here; that was the first time I ever heard a suggestion of that kind made; on the hearing here?

Q. Didn't you hear it made at the creditors' meeting down at New Albany?

A. No I have no recollection of that.

By the Court:

Q. You heard the statement made down in chambers?

A. Down in chambers?

Q. Yes, you heard the statement made by the attorney?

A. Who was here at the meeting?

Q. Yes.

A. I heard Mr. Watts say at that hearing, yes, that the plan was on those lines.

Q. You heard Mr. Watts say that down in the chambers of this Court.

A. Yes, Your Honor, I heard what was said here.

Q. That that was his plan?

A. That was his plan; it was a plan on those lines, something of that kind; I couldn't repeat the statement of the words.

By Mr. LaFollette:

Q. At the time of the creditors' meeting I believe you said you were present and made some suggestions?

A. Yes sir.

Q. Was Mr. Watts present?

A. Mr. Watts was present.

Q. What subjects were talked of there at the creditors' meeting?

A. Well there were a number of controversies over unfinished contracts, some persons claiming that work had been paid for and not delivered and that they were entitled to have the boilers and the machinery delivered because they had paid for them; and there was some discussion as to whether it would be profitable to finish unfinished contracts and matters of that kind, were discussed.

Q. Was there anything said about payments that had been made? Was there anything said about the payments that had been made to Minnie Zier?

A. No, not that I remember of.

Q. Was there anything said about the $3,100 that was paid to Ryerson?

A. If it was mentioned I did'nt hear it.

By the Court:

Q. Was your brother in the creditors' meeting?

A. Yes, he was there.

Q. Did he say anything about having taken $9,000 to Chicago?

A. No sir?

Q. Did he tell about the $600 he received?

A. No.

Q. And Watts said nothing about the $3,100 that had been received by Ryerson & Son?

A. No sir.

Q. That was a meeting to advise with the creditors.

A. Yes it was called for that purpose as I understood it.

By Mr. LaFollette:

Q. And was court in session?

A. When the term was going on.

Q. That was during the term?

A. Yes sir.

Q. Was Judge Utz present?

A. Oh yes, he was presiding.

Q. Presiding at the creditor's meeting?

A. Yes.

Q. Well was it the court presiding?

A. Yes, it was the court presiding; there was an order entered that day for the operation of the plant; a petition filed.

Q. Well, do you know anything about the form of notice that went out to the creditors?

A. My recollection is it was a letter.

Q. It was a letter to them that it was to be a creditors' meeting?

A. Possibly it was.

Q. To consider the business of M. Zier & Company? There wasn't any notice to them that they were to come and be convened at a session of court, to go up against the Floyd circuit?

A. No, it was stated, I presume, that it was to be held in court. There was no summons or anything of that sort.

Q. Judge Utz presided, and the matter was discussed in open court?

A. Yes, with a large number of creditors.

Q. Did the creditors discuss the questions to the court?

A. Two or three creditors made suggestions to the court, I wouldn't be able to say just how many.

Q. And how soon after that, if you know, was the order made that the Court entered that day? Was it immediately done there?

A. That is my understanding.

Q. Did any of you, as attorneys, supervise the form of the order, either you or your brother or Watts?

A. Mr. Watts was preparing the order.

Q. During the meeting?

A. During the meeting; yes, sir.

Q. He prepared it there in the court room?

A. I wouldn't say he prepared all of it; he was working on it; I saw him there.

Q. Was that entry that he prepared submitted to the creditors at that meeting so that they might know what kind of an order was going to be spread upon the record?

A. It was submitted to some of them; I couldn't say that it was submitted to all. My recollection is that it was not read publicly while I was there.

Q. You think it was not publicly read to the meeting?

A. I don't think it was; at least I didn't hear it; I was out of the room part of the time.

Q. How long did the meeting continue?

A. Oh, I think most of the day.

Q. Did you have an adjournment and then go back again in an afternoon session?

A. I don't remember about that, but we were there a good while.

Q. Following that meeting, then—

By the Court:

Q. Before you leave that meeting, was there anything said in that meeting in the presence of these creditors about enjoining the creditors from prosecuting their suits in any other court?

A. That was in the entry as I understood it.

Q. I didn't ask what was in the entry; I asked was there anything said about that in that meeting?

A. I heard Mr. Stotsenburg say that that ought to go in the entry, but that wasn't said to the meeting generally.

Q. Then it was not stated to the creditors?

A. I didn't hear it stated.

Q. Was any such matter as that discussed in the creditors' meeting when the creditors were present—

A. I heard nothing of that sort.

Q. (Continuing) That there should be included in this entry an order or injunction of that sort?

A. Not while I was there.

By Mr. LaFollette:

Q. Now what further connection did you have with the matter as it proceeded after that meeting, and what do you personally know about what Mr. Watts did in that same connection?

A. Well I didn't have a great deal more to do with it except as an officer of the trust company, and not a great deal with that; I had something to do with claims where there was some trouble about them; I had some trouble with claims that were in dispute, and went to Louisville once with Mr. Zier to see about men who were getting work done, where they were not satisfied with work that was being done.

Q. Mr. Watts was the attorney for your company?

A. Yes sir.

Q. Did he advise with you from time to time as to the proceeding?

A. He advised with the secretary through the telephone, and came over to see him; at least I saw him over in the office, and my recollection is some of these matters that were in dispute were sent to him to be adjusted; I had no further active participation in it until he got the order to come up here and present the question of jurisdiction to this court.

Q. What was the date of the creditors' meeting that you had spoken of?

A. My recollection is the 24th of January.

Q. How soon after that was it, if you know, that a petition was filed in the bankrupt court?

A. I heard of that on Thursday before the Floyd circuit court adjourned; the Floyd circuit court adjourned on the 14th; on the Thursday preceding I heard this petition had been filed.

Q. Now after having heard that on the Thursday before the adjournment of court how soon did you see Mr. Watts?

A. I telephoned Mr. Watts the fact that that petition had been filed that day.

Q. On Thursday?

A. On Thursday.

The Court: What petition had been filed?

Mr. LaFollette: The petition in bankruptcy.

The witness: And the next day Mr. Watts came over, is my recollection.

Q. On Friday?

A. On Friday.

Q. Now was there anything done on Friday in court about the proceedings?

A. I don't remember that anything was done in the court; it was then that he proposed this plan of filing a petition in the Floyd Circuit Court to procure an order to present this question as it was presented up here.

Q. Was that petition filed that day, on Friday as you understand it?

A. Not on Friday; I am sure it was not.

Q. When was it filed?

A. It was filed on Saturday.

Q. The following day?

A. The following day.

Q. And the order taken of the Court that you proceed to Indianapolis to present the jurisdictional question; was it put in that form as you understand it?

A. I have never read the order; as I remember it was to proceed here to present the question of the clash of jurisdiction; I think that is my recollection of it.

Q. That was done under the advice of Mr. Watts the attorney for the receiver?

A. Mr. Watts prepared the paper.

By the Court:

Q. The question is whether or not it was done under his advice.

A. Oh yes it was his idea; it was his suggestion.

By Mr. LaFollette.

Q. Do you know if there had been any other papers filed in Court by Mr. Connor, the receiver, up to that time, to Saturday?

A. I knew of the filing of Mr. Connor's intervening petition, I think it was.

Q. That was filed on Saturday too, wasn't it?

Q. That was filed—yes that was filed before Mr. Watts's petition was filed.

Q. Did you talk with Mr. Watts about that?

A. I handed it to him when he came in; his attention was called to it when he came into court.

Q. After you handed him that petition what did he say to you, if anything, about it, and about what steps would be taken in regard to it?

A. He didn't talk to me about that; he took the petition and immediately filed his petition, as I understood it. After that he and Mr. Hester had some argument before Judge Utz about it. I took no part in that. I left the court room immediately afterward.

By the Court:

Q. Mr. Connor's petition that you speak about, that was the petition of this receiver to the Floyd Circuit Court showing his authority and his appointment by this court and asking that court to order its receiver to turn the property over to him?

A. That is my understanding: I didn't read it except at the first page.

Mr. Miller: Wouldn't it be better to have him read the petition?

Mr. LaFollette: I am not asking to prove the contents of the petition; that will go in evidence.

The Court: In the history of the transaction, you may show about the filing of the petition and what was done about it. Of course, as to the contents of the petition, that cannot be proved by the evidence of this witness.

The witness: I just handed it to Mr. Watts, and told him it was a petition filed by Mr. Hester for Mr. Connor, and he took it and went on to another desk; he didn't talk with me about it.

By Mr. LaFollette:

Q. What I want to know is, if you know what Mr. Watts said there about it to the Court, about this petition and what should be done with it, the petition of Connor, receiver?

A. All I heard Mr. Watts say was something about the petition not being, as I understood it, a full appearance by Mr. Connor.

By the Court:

Q. By whom.

A. By Mr. Connor; there was something of that kind as I recollect it. That was addressed to the court, you understand, not to me.

Q. There was a technical objection?

A. Of some sort.

By Mr. LaFollette:

Q. Did you hear anything further said about it other than that?

A. Not about that petition.

Q. And on Saturday the Court adjourned?

A. Yes sir, that was the last day of the term. It adjourned.

Q. Did you hear anything said in the Court in the presence of Mr. Watts about the disposition of the petition of Connor, receiver, about what entry should be made concerning it?

A. No, I heard nothing about it.

Q. Was it on the Monday following that you and Mr. Watts came to Indianapolis?

A. Yes sir.

Q. Was there anything said on that Saturday before your coming that you would come here on Monday,—or on Friday probably, before?

A. Yes, it was understood that we were coming.

By the Court:

Q. The question is whether there was anything said?

A. Well I must have been told that we were coming, because the order was made by Mr. LaFollette.

By Mr. LaFollette:

Q. It is a fact, isn't it, Mr. Jewett, that there was telephone communication to, the clerk of the district court at Indianapolis that you would come?

A. Yes.

Q. Was that from your office?

A. That was from my office.

Q. Was that conversation held by Mr. Watts?

A. By Mr. Watts with someone here.

Q. What was the statement made, did you hear that, by Mr. Watts?

A. I think I did; he stated he wanted to come to Indianapolis to present the question of the jurisdiction of the courts.

By the Court:

Q. Did he tell that to you, or do you say he said that over the telephone?

A. I wouldn't be positive about that.

Q. I want you to be positive about it. I want you to tell the court which it was.

A. I heard him go to the telephone, and he either said that over the telephone, or said it to me just at that time.

Q. You are not certain which?

A. I am not certain about that.

By Mr. LaFollette:

Q. Are you certain that you heard the telephone conversation that Mr. Watts held?

A. I wouldn't be certain I heard all of the conversation, or just what was said; I saw Mr. Watts go to the telephone, knew he was calling Indianapolis; the telephone is in the room in the office where everyone comes in and out, and there were other people coming in and out all the time; I wouldn't be positive about that.

Q. But as the result of that you did come to Indianapolis?

A. Yes.

Q. And you were here on Monday and Tuesday?

A. Monday and Tuesday.

Q. The question of jurisdiction of the courts was argued to this court?

A. Argued to this court all Monday afternoon.

Q. And any part of Tuesday?

A. Yes, Tuesday morning.

Q. Was Mr. Hester here representing the petitioning creditors?

A. Hester and some other gentleman, I don't remember his name, of Chicago.

Q. And after that argument you reached a conclusion about the matter, did you?

A. Yes sir.

Q. And that was that you were to turn over the property to Mr. Connor, receiver?

A. Yes sir.

Q. You speaking for the receiver, you representing the trust company, and Mr. Watts, your attorney also?

A. Yes.

Q. Before leaving here it was stated both by you and Mr. Watts that you would return to New Albany and turn the property over to Mr. Connor, the receiver appointed by this court?

A. He stated that distinctly, and so did I.

Q. What time did you reach New Albany on your return?

A. About seven o'clock of Tuesday night.

Q. Do you know where Mr. Watts went on Tuesday night?

A. No, I left him at 14th street, is my recollection.

Q. At Louisville?

A. Yes, we go to 14th street and come back across the bridge.

Q. He didn't go to New Albany that night?

A. Not so far as I know.

Q. When did you next see him?

A. I think it was the next afternoon.

Q. That would be Wednesday?

A. Wednesday.

Q. Where?

A. He came in the office; that is my understanding.

Q. Your office at New Albany?

A. Yes sir, he came in there that afternoon; I am not very clear about that, whether it was that day or Thursday; he did come in the office and asked me to telephone to Mr. Kelso.

By the court:

Q. What did he say?

A. He asked me how late Mr. Kelso stayed in his office and I told him he left between four and five o'clock, and he said—he asked me to call him up and ask him to wait until he and Mr. Sachs could get there.

Q. Now who was it asked you to do that?

A. Mr. Watts.

Q. William W. Watts, the defendant here.

A. Yes sir.

By Mr. LaFollette:

Q. Hadn't you seen Mr. Watts from the time you went home from Indianapolis until the time when he and Mr. Sachs came together to your office and asked you to call up Mr. Kelso?

A. Not to my recollection.

Q. Do you know whether there had been anything said about this matter in the court or to Judge Utz prior to that time?

A. No, Mr. Watts had told me that he was going to see Judge Utz with Mr. Sachs.

Q. When did he tell you that?

A. Going down on the train.

Q. That he was going to see Judge Utz with Mr. Sachs? Do you know how it came that he connected Mr. Sachs with the matter?

A. Yes sir, he explained that to me; he stated that he was going to bring Mr. Sachs to New Albany to see Judge Utz, and have Mr. Sachs talk to Judge Utz, and, as I understand it, justify the course he had taken in Judge Utz's eyes; justify himself with Judge Utz by having Mr. Sachs talk to Judge Utz.

Q. Did you know at that time as you came down from Indianapolis, that Judge Utz would disagree with the course you had taken?

A. I did not; I understood—

Q. (Interrupting) Well, I understood that he would agree with it.

Q. You made the statement up here that you would turn over the property, and Mr. Watts consented to that, and then as you went home Mr. Watts said that he would get Mr. Sachs, a lawyer from Louisville, to come over and talk with Judge Utz and satisfy him that the course you had taken was right? Is that the way it occurred?

A. No, don't understand me to say that he was to justify his giving up the property, but justify him about the proceedings he had taken about coming up here to present the question of jurisdiction. There was no question about justifying the turning over of the property.

Q. But that matter had been presented to the court before you came, as I understood?

A. Yes sir.

Q. If it had been presented to Judge Utz, and he had made an order that you should come, what occasion would there be on your way home for getting a lawyer to come over and having him justify it?

A. I don't say I saw any occasion for it. Mr. Watts made an explanation to me of what he intended to do about squaring himself with Judge Utz to show that he had not made a mistake.

By the Court:

Q. In what proceeding?

A. This petition, coming into your court and praying to raise this question of the clash of jurisdiction. Your Honor

will remember he entered a special, limited appearance, and I understood that Mr. Sachs was to explain to Judge Utz that that was a proper proceeding.

Q. That was the way you understood it?

A. Yes sir.

Q. What did Mr. Watts say to you about it?

A. He said he was going to bring Mr. Sachs to New Albany to explain to Judge Utz that he had taken the proper proceedings in this matter by coming up here into this court on Monday; that is what he said to me.

By Mr. LaFollette:

Q. Then on Wednesday afternoon, you think, they came to your office?

A. Yes, I wouldn't remember that, except as I say, Mr. Kelso said I telephoned him, and I have no doubt I did.

Q. You remember they came to your office?

A. On one occasion.

Q. Was there any conversation had there then about the proceedings that had been had here and at New Albany in the courts, or about any other proceedings that was to be had?

A. No, I didn't discuss that with them at all.

Q. Did they mention that to you?

A. No.

By the Court:

Q. Who do you mean by "They"?

A. Mr Sachs and Mr Watts.

Q. It was they who came to your office, and it was for them that you telephoned Mr. Kelso?

A. It was for them that I telephoned Mr. Kelso.

Q. What did you say to Mr Kelso?

A. Told him two gentlemen were coming around to see him.

Q. And to wait at his office?

A. To wait at his office.

By Mr. LaFollette:

Q. How soon after that did they leave your office?

A. They left immediately.

Q. Do you know what purpose they had in coming to your office? Was there anything occurred there that would give you that information?

A. I think Mr. Watts came in to ask me about one of those Louisville claims; goods that had been sold by Mr. Zier & Company to a firm in Louisville, and there was some question about the payment for them.

Q. Then you had some conversation with him about that claim?

A. That is my recollection about what he came in for.

Q. Had you ever known Mr. Sachs before then?

A. No.

Q. Were you introduced to him by M. Watts when he came in.

A. Yes, I was introduced to him.

Q. That was the first you knew of him.

A. Yes sir, I had met his brother before.

Q. Did you call to mind then that this was the same gentleman that Mr. Watts spoke about when you were on your way home from Indianapolis?

A. I assumed he was.

Q. Did you say anything about the matter of the proceedings in the M. Zier & Company case in bankruptcy?

A. Not at that time.

Q. You didn't talk about that at all?

A. There was no discussion as far as I can recollect.

Q. You didn't talk with Mr. Sachs about what his view was about your coming up here, whether he would justify Mr. Watts or not?

A. No, I didn't talk about that; he did at another time when I was present, talk about that, but I have no recollection of anything being said then.

Q. Did you know at that time that there was being some steps taken before Judge Utz to have you discharged or removed as the receiver—that is the New Albany Trust Company?

A. I did not.

Q. Had you learned up to that time that Judge Utz was disapproving the course that had been taken by you?

A. No, I talked to Judge Utz in the morning about it, and while he had not expressed any approval of it, he did not express any disapproval.

Q. That was Wednesday morning?

A. Yes sir; he came in the office.

By the Court:

Q. You say you told him then what you had agreed to do?

A. Yes, I talked with him about it.

Q. And told him you had offered to turn over the property to the receiver of this Court?

A. Yes sir.

Q. And he made no objection at that time?

A. Not as I understood it. He certainly didn't say we should not.

By Mr. LaFollette:

Q. That was at your office on Wednesday morning? Was anyone with him at that time when he came into your office?

A. No.

Q. Then following that, after you had had that talk that morning with Judge Utz, and then in the morning you met Mr. Watts and Mr. Sachs, as you have stated, when after that did you learn that there was some proceeding being taken to prevent you from turning over the property or to take some other methods of getting the property?

A. I learned the next day when I went to Judge Utz's office that he didn't want to turn over the property, when we tendered our resignation and stated that we had agreed to turn it over in writing and had filed that paper.

Q. Was there anybody else present in Judge Utz's office at that time?

A. Yes, Mr. Watts and Mr. Sachs, and I am under the impression Mr. Kelso was there and Judge Utz.

Q. That was on Thursday?

A. That was on Thursday morning.

By the Court:

Q. And it was the evening before that that you had telephoned Kelso that two gentlemen would come over to see him?

A. I suppose it was. I say I don't remember that, except from Mr. Kelso's statement about it.

By Mr. LaFollette.

Q. Now you may state what was said there by Mr. Watts or by Mr. Sachs when you tendered your resignation, and stated that you were turning over the property to Mr. Connor, receiver?

A. Mr. Watts said he had advised the company while here to turn the property over; that is while in the court here; and either I or Mr. Watts read a paper, my recollection is I read a paper, and Mr. Sachs remarked that our giving up the property was contempt of the Floyd Circuit Court, and the paper ought not to be allowed to be filed.

Q. Mr. Sachs said that?

A. Said that, and Judge Utz said the paper should be filed. I stated in connection with what was said that I had stated to this court that the property would be turned over, and it would be turned over, and Judge said something about he would not expect me to break my faith or something of that sort, but he said the property must not be turned over just at that time; I understood it was until we had made some showing to his court of our proceedings.

By the Court:

Q. (Interrupting.) State what he said?

A. I said I couldn't state the exact language.

Q. I mean not what you understood him to mean, but what you understood him to state?

A. He stated that the property should not be turned over until we had made a further report, or a report, as I understood

Q. Were Watts and Sachs with Judge Utz when you went in?

A. That is my recollection that they were there.

By Mr. LaFollette:

Q. At that time, Mr. Jewett, do you remember whether Mr. Watts said anything about your not turning it over?

A. No, if he did say anything about not turning it over, I didn't hear it.

Q. But Mr. Sachs said you should not turn it over?

A. No, Mr. Sachs didn't say that; he said the filing of that paper was a contempt of the Court, and it ought not to be allowed to be filed.

Q. Did he make any explanation of that other than to say it ought not to be allowed to be filed? What was there in the paper that he referred to, if you know?

A. Why our statement that we intended to turn over the property.

Q. Was there anything said at that time by Judge Utz in the presence of Mr. Watts and Mr. Sachs about that if there was not—if they didn't find any law to authorize the holding of the property that he would find Indiana law to hold it? Do you remember any expression of that kind?

A. No, I don't remember about that; there was some discussion about the law, but I don't remember what was said.

Q. How long were you there before the Judge? The court, I believe, was not in session?

A. No, the court was not in session. I was there about twenty minutes, I should say.

Q. What was said by you that probably the property had already been turned over, that Mr. Connor was at your office when you came away?

A. I don't remember to have said that at that time, although I may have done it. Mr. Connor had been at the office, and we had offered to turn it over to him, and I may have said it at that time that it probably had been turned over; I am sure I said—that I spoke of Mr. Connor having been there at our office.

Q. Do you know whether or not there had been any papers filed before the court for the purpose of preventing the turning over of the property at the time you were over here before Judge Utz?

A. I did not.

Q. Did you know of there being a paper or a plea of some kind filed by D. A. Sachs on behalf of the United States Tube Company?

A. I do not.

Q. You did not know that there was a paper filed in which the New Albany Trust Company was being charged with having wrongfully and unlawfully, and without leave of the Floyd Circuit Court, turned over and surrendered the possession of the M. Zier & Company boiler plant, etc., to Frederick D. Connor, who was acting as receiver in bankruptcy and so forth.

A. I didn't know anything of that paper until the trust company was cited for contempt of the Floyd Circuit Court, and then I was informed of that paper.

Q. And do you call to mind now when you heard of that? When you got that notice?

A. I think it was recited in the citation to us.

Q. But when it was is what I want to know.

A. I couldn't say whether that was Thursday or Friday.

Q. Did you learn in the meantime that an entry had been made removing the trust company as receiver and appointing Mr. Kelso?

A. Not until I heard of this citation for contempt of the Floyd circuit court; that is the first I learned of any of that proceeding.

Q. Had there been any talk of that with you or in your presence?

A. There never was at any time.

Q. When, after you did learn of that, and after you had been citied for contempt, did you have any conversation with Mr. Watts about it?

A. No, I never talked with Mr. Watts after the time I filed the resignation up to the time that I testified to when I went to Louisville to tell him that my brother could not appear for him in this proceeding; that was on Monday; the 23d, which was a legal holiday, I went to Louisville that day, and gave him that message.

Q. What I particularly had reference to was whether or not Mr. Watts talked to you or you to him about the matter of being in contempt, as charged, of the Floyd circuit court? Whether he talked to you about that or had any conference with you about it?

A. No I didn't talk to him about that at all.

Q. Were you present before Judge Utz at the time the matter was talked about and also, suggested that proceedings be instituted against you and W. W. Watts also.

A. No sir, I heard nothing of that.

Q. You heard nothing of that?

A. I never was there after the time I filed the resignation.

The defendants did not cross-examine the witness.

Witness excused.

Edward Fitzpatrick, a witness called on behalf of the Government, being duly sworn, and examined by Mr. LaFollette:

Q. State your name?

A. Edward Fitzpatrick.

Q. Where do you live?

A. I live in New Albany.

Q. Are you acquainted with Charles L. and Henry Jewett?

A. Yes sir.

Q. Do you know where their office is in the city of New Albany?

A. Yes sir.

Q. Are you acquainted with D. A. Sachs and W. W. Watts?

A. Yes sir.

Q. Do you remember of having been in the office of Jewett and Jewett in New Albany during probably the last week in February last when Mr. Sachs and Mr. Watts came to their office?

A. I do.

Q. Can you state definitely when that was?

A. I could not state the date. I know it was on Wednesday because I am detailed to go to New Albany on Wednesday; I am employed in Louisville as a newspaper reporter; and I go to New Albany not to write news but to write gossip on Wednesday and on this Wednesday I called on Mr. Jewett to congratulate him on his recovery from a spell of sickness. I did not remain long, just a moment, and whilst I was there I saw Mr. Sachs and Mr. Watts and I looked at Mr. Sachs and said, "Hello Sachs, what are you doing over here." and He said, "I am just over here to help out my friend Watts and I passed out after talking to Mr. Jewett a moment.

Q. Did you hear any conversation between either of the Jewetts and either Watts or Sachs?

A. Oh no, I did not. I did not remain in the office but a moment.

Q. Was that statement you have related all that you heard while you were there?

A. That was all. There was something said about the weather and about New Albany people and I said something to Mr. Sachs about taking him and showing him the town, but further than that I recollect nothing else.

Q. Did you see them anywhere else while you were over there?

A. No sir; I did not meet them any place else and did not think about afterwards.

Charles L. Jewett, a witness called for the government, being duly sworn and examined by Mr. LaFollette:

Q. You may state your name to the court?
A. Charles L. Jewett.
Q. Where do you reside?
A. New Albany.
Q. You are a practicing lawyer?
A. Yes sir.
Q. A member of the firm of Jewett & Jewett?
A. Our firm name is C. L. and H. E. Jewett.
Q. You are acquainted with D. A. Sachs and William W. Watts, are you?
A. Yes sir.
Q. You knew of the company that was doing business at New Albany in the name of M. Zier & Co.?
A. Yes sir, we were their attorneys as a firm and as a corporation for probably ten years.
Q. Had it been a corporation that long?
A. No sir; I think about four years ago they attempted to make a corporation and prior to that time it had beeen a firm composed of Dr. Edward Zier of Minneapolis and Michael Zier, brothers. Then an attempt was made to incorporate it by corporation papers and Mr. Urey, the bookkeeper, as I remember it, became the third corporator, but I don't remember exactly about it.
Q. Do you remember the stockholders of the company and how much they owned of it respectively?
A. I saw the stock book in December, but I would not undertake to give the exact proportions; there was no stock subscriptions that ever I knew of. In fact, under the form under which they were incorporated no occasion for it as I saw it. It was incorporated with the idea of a corporation taking all the property of the firm for all of the stock of the corporation. It was incorporated with only $25000 of stock and to answer the question more in detail, I think the stock was issued, two or three or four shares to Mr.Urey, something nearly half of the total capital stock to Michael Zier, two or three shares of the stock to Dr. Edward Zier of Minneapolis, and something less than half of the total capital stock to Minnie M. Zier his wife, now widow, and I think Doctor Zier became the president and I know that Michael Zier was made vice-president and treasurer and Mr. Urey the secretary.
Q. Were you familiar, that is somewhat familiar with the business and plant for some years by reason of being adviser? adviser?
A. Only in this way—
The Court: The question is not how, but the question is were you familiar.
A. Then I was never in the plant in my life. I know where it is located, in some buildings belonging to the Monon Railroad.

Q. What I mean more particularly is did you know of its financial standing?

A. I knew it was hard pressed, and I knew that recently that it was insolvent, thoroughly satisfied of that, at the time of all these matters inquired about.

Q. How long before December last had you been advising with Michael Zier, who was the manager of the plant, as to the financial condition and what might result as to the plant?

A. I think the only matters that Michael Zier and I talked about as to the financial condition of the plant, up until about November and December, was the matter of the indebtedness to Mrs. Minnie Zier. He talked to me about that. The business of the firm, that is their controversies over contracts and so forth were usually talked over with my brother, who was the detail man, and Mr. Zier talked with me about Mrs. Zier's matter. I well knew Doctor and Mrs. Zier, they were friends of mine.

The Court: There's no question about who were your friends. Just answer the question.

Q. How much did the concern owe Minnie Zier, if you know?

A. $18000—I can only give round figures—$18000. on account of a couple of notes that had been—

By the Court: Just answer the question. How much it was that was owing to her. He did not ask you anything about the note.

A. $18000 and a note of $1725. is all that I knew anything about.

Q. Nearly $20,000?

A. Yes sir.

Q. Did you know prior to December the firm of Ryerson and Son of Chicago?

A. Never; that is, I knew there was such a firm in my talk with Mr. Zier; it is a corporation.

Q. You knew it or learned it from Zier?

A. Yes sir.

Q. When did you first meet a representative or agent of that company?

A. Never until I went to their place in Chicago.

Q. What was the purpose of your going to their place of business in Chicago?

A. A three-fold purpose. Mr. Zier had told me that they were trying to find a partner or some one to put money into the business to keep it going and that he thought they would help him. Mr. Zier usually spoke—

The Court: Never mind about what he spoke; just answer the question.

A. These were the purposes I was going for.

The Court: The purposes cannot be what he usually spoke; just answer the question.

A. I went there for the purpose of ascertaining whether they would give him any financial assistance, do anything to bring the company out of its difficulties and whether they would as the largest creditor institute proceedings for a receivership in the State court, and that latter was the principal business in my mind. I did not have much faith in the other proposition, although Mr. Zier did; that is, I did not attach much importance to it.

By the Court:

Q. The principal thing on your part was to see whether Ryerson & Son would institute proceedings in the State court against M. Zier & Co.?

A. Yes sir.

Q. And you represented M. Zier & Co. at that time?

A. Yes sir that was it.

By Mr. LaFollette:

Q. Did you know before going to Chicago who represented Ryerson & Son, or whether they had an attorney?

A. No sir.

Q. Did you know substantially how much money was owing to Ryerson & Son?

A. Yes, sir I had their account.

Q. How much was it?

A. Substantially, $15000.

Q. Did you know the fact that about $3100 had been paid to Ryerson & Son within the last few months prior to the time you went to Chicago.

A. I think so. I think the statement showed it.

Q. Do you know the date of the payment?

A. I could not undertake to say now, but I should say that it was within the time you mentioned.

Q. Did you have in your hands for collection the claim of Minnie Zier?

A. No sir.

Q. In what way did you represent her and act for her?

A. I did not represent her.

Q. Under what arrangement or for what reason was the money paid by M. Zier & Co. for Minnie Zier to you?

A. Mr. Zier told me about the middle of December that he was ready to pay her the money; I had heard before that he intended to pay her and I supposed that these sums that he had taken out of the business for her were being paid direct to her. Her agent, Mr. Mergel, had been there, but I had never seen him. He had been to the bank. He always said Mr. Mergel,—he said, I wrote Mr. Mergel to send you Minnie Zier's papers. I want to pay that money and he said "I wish you would get them and he would inquire

whether they had come or not. So I telephoned to Mr. Mergel, he gave me his address, and I telegraphed Mr. Mergel to send the Zier papers and in that connection wrote him that I wanted to know Minnie Zier's connection with that firm. I called it a firm because I had not regarded the corporation as being well carried out; I wanted to know about that; in answer to that he sent me copies of two notes assigned by the New Albany National Bank, assigned without recourse; one of them Mr. Connor has. He sent me copies, he did not send the originals; meanwhile we had talked about the matter of the receivership.

Q. You had talked that with Mr. Zier?

A. Yes, sir. He wanted to get some way by which he could keep the plant going and at the same time get some adjustment with his creditors and he believed that Ryerson & Son, of whom he was a large customer, would come in an aid him in this by financial means if he could keep this thing going. It was my own offer late in the month after these copies of notes came—then I said to Mr. Zier, I am going to Chicago as we had arranged for me to go and see Ryerson & Son and I will pay that money to Mr. Mergel. That was my own proposition, as I recollect it. Mr. Zier wanted those notes sent down to our office to be paid and Mr. Zier paid the money, I think he paid it on the 24th and the 26th of December.

Q. In two separate payments?

A. I think he paid two sums; I think the books show that on the 24th—

The Court: It is not a question of what the books show.

A. It was not paid to me, but to my brother, I was not present.

Q. If you don't know, say you don't know.

A. It was paid on the 24th of December, except $2100 and that was paid on the 26th of December.

Q. Making all together $9600?

A. Yes sir.

Q. You took that money with you when you went to Chicago?

A. No sir; not all of it; I took $9000, I said to Mr. Zier—

The Court: You have answered the question.

Q. You appropriated $600 as a fee?

A. Yes sir, I required him to pay a fee and gave him a receipt for it.

Q. Altogether you got $9600 and kept $600 and took $9000 to Chicago and paid it to Mr. Mergel?

A. Yes sir.

Q. Did you meet him at Chicago?

A. Yes sir.

Q. He did not live there?

A. No sir; I telegraphed him to meet me at Chicago.

Q. And you turned over the money to him there?

A. Yes sir; that is, I gave him a draft for it.

Q. At that time you were there also for the purpose of arranging for the institution of a suit which you regarded in the nature of a friendly proceeding in the interests of the defendants as much as of the plaintiff?

A. Yes, sir; a friendly receivership to keep the plant going.

Q. By having a receiver appointed, who would under the law and directions of the State court operate the plant and subsequently arrange with the creditors?

A. Yes sir, that was the real purpose of my visit to Chicago.

Q. Up to that time had you had any conference with William W. Watts?

A. No sir.

Q. You did not talk with him about it?

A. No sir.

Q. The plan of proceeding in the State court at New Albany to have a receiver appointed and operate the plant of M. Zier & Co. was a plan you had formulated yourself?

A. Yes sir, between Mr. Zier and myself.

By the Court:

Q. Well, you went to Chicago for the purpose of arranging with Ryerson to bring this friendly suit?

A. That was my desire.

Q. Did you tell them you had brought to Chicago $9000 of the assets of this corporation and turned it over to one of the stockholders?

A. No sir.

Q. And the arrangement was made that they should bring this friendly suit and adjust the affairs of this corporation and you had just paid over $9000, which you said nothing about?

A. That is it.

Q. (By Mr. LaFollette): Had you had any correspondence with Minnie Zier herself?

A. No, she—

The Court: That question is answered.

A. I never had any correspondence with her in my life.

Q. Had you had any correspondence with her agent prior to the time that Michael Zier told you that he wanted to pay her a part of what he owed her?

A. No sir; I did not even know his name and I did not know she had an agent.

Q. You learned that through Michael Zier?

A. Yes sir.

Q. And then at his request you telegraphed to that address but received only copies of the notes?

A. Yes sir.

Q. Then after having received copies of the notes, M. Zier turned over to you $9600, and you telegraphed the agent to meet him at Chicago and you paid him $9000?

A. Yes, sir.

By Mr. Miller. It certainly seems to me that this hearing will be long enough if the testimony is stated once, without the district attorney repeating it over again and summarizing it after the witness; I object to that.

Mr. LaFollette: We will save you that.

The Court: Don't have any unnecessary repetition.

Q. When you got to Chicago and went to Ryerson & Son whom did you converse with there?

A. First with Mr. Hamford, the credit man, the man I endeavored to speak about a while ago.

The Court: Just answer the question and we will get along a great deal faster; if there is an explanation proper you may make it.

Q. Did you with him talk about the kind of suit you wanted to have brought?

A. Yes sir; I told him the kind of suit I wanted to have brought.

Q. Was he familiar with court proceedings?

A. He manifested a good deal of familiarity with them yes sir.

Q. Did he indicate to you if you instituted proceedings of that kind against M. Zier & Co. that it might result in bankruptcy proceedings.?

A. Yes sir.

Q. Did you talk that matter over with him? Did you tell him that the plan you had formulated you thought would avoid that?

A. No sir; I did not tell him that. I told him on that point, but I did not tell him that. I talked with him on that point.

Q. Did any one else engage with you in the conversation of behalf of Ryerson & Son?

A. Mr. Jackson was sent for, whom I regarded as an attorney about the place.

Q. Did he talk with you on the same subject?

A. Yes sir.

Q. Did you explain to him the plan that you had in mind about the suit?

A. Yes sir I think so.

Q. And wanted them to institute it?

Q. Did he manifest a knowledge of court proceedings?

A. Yes sir.

Q. Was he familiar with the bankrupt law also?

A. I think so.

Q. Did he talk to you about the probability of a suit instituted resulting in bankruptcy proceedings?

A. I think so.

Q. By the Court: What was said about that?

A. Well, I was going to say; I said in substance that this suit would not prevent bankruptcy proceedings. I remember they asked me if there could not be bankruptcy proceedings, if Zier & Co. had not committed acts of bankruptcy.

A. I said lots of them; preferences, lot of them, and the company is insolvent, but we believe if suit is filed in the state court and the property operated and the creditors all notified and brought together the matter can be kept in that shape and I said to them I believed the state court would retain the property, the plant, and operate it anyhow, and the principal argument I advanced—

The Court: You were asked what you said?

A. I said the bankrupt courts would be loth to operate a small plant like that at a distance and I thought a receivership in the state courts would be the best for all parties concerned, as far as operating the plant was concerned. When I say I said this to Mr. Jackson—Mr Jackson and Mr. Hamford and I were all talking and as to who I addressed the remarks to I cannot remember.

Q. That is not material.

A. And I talked about the town, that we wanted to keep the factory going; that the plant was in leased buildings and its stoppage and failure to pay rent would forfeit the lease and it would destroy the business of the concern and they knew the reputation of the boilers made there and so forth; so that to sum it up I was urging upon them that it was best for them and everybody, but especially I was representing Zier and Company to keep the plant going, to keep the men employed, to have a state receivership, and I advocated the idea that I did not think the bankrupt court would operate the plant and that was the trend of the matter I also talked afterwards, to I think the gentleman's name is Butler; this is a corporation of New York and Chicago, and I think Mr. Butler is the vice-president at Chicago and I talked with him and he wanted to see the general attorneys of the firm and it was arranged that I would meet with Mr. Jackson and Mr. Hamford at the office of these attorneys of the firm in Chicago that afternoon, I think at two o'clock; this was on the 29th of December, which was Monday, and the day before the Receiver was appointed; in a general way, that was all I said.

Q. That was agreed on—it resulted in an agreemetn to bring this suit?

A Not there, not there, not there; I urged the suit but they did not assent to it there. Mr. Butler, as I understood, he was to meet with these attorneys and me, but he did not; of course they had the statements of this concern there and insisted—I took up the statement showing that the indebtedness of the firm—just a general statement that Mr. Zier had furnished showing the indebtedness of the firm was much better and we talked about that because they brought out statements showing that the assets were reported as much larger and wanted me to explain that and I told them that I could not; that I had asked Mr. Zier to give me a true statement of this concern and he had given this estimate to me and it was made out in my office but not in detail.

Q. Do you know where Mr. Zier got that $9600 when he paid it to you?

A. No sir.

Q. Did you ask him about it?

A. Yes sir.

Q. You knew he got it out of the business?

A. Yes sir.

Q. You knew he got it out of the corporation?

A. It was corporation money.

Q. You knew the corporation was insolvent?

A. Yes sir.

Q. When you were in Chicago talking about indebtedness and that there had been preferences did you tell them anything about having brought up $9000 and turned it over to one of the stockholders?

A. I did not tell them so, I said nothing about that.

Q. When did you reach the conclusion as to what steps should be taken in the same day?

A. In the afternoon.

Q. Of the 29th.

A. Of the 29th and I think the firm—

The Court: The question is when you reached that conclusion?

A. At the office of this firm.

Q. What was said to you, if anything, about who would represent them at New Albany?

A. All that was said to me on the subject of who would represent them at this meeting in the afternoon, Mr. Hamford and Mr. Jackson, who were present, with the attorney, Mr. Fisher, I think,—Mr. Hamford asked me the names of our attorneys at New Albany and I gave him their names generally, three or four of them; we have not very many; and I gave him the name of Mr. Stotsenberg, Kelso—

The Court: Read him the question.

The question was read by the reporter.

A. That was said, and after a while Mr. Hanford and the attorney, Mr. Fisher, if that was his name, went out and had a consultation in another room, and Mr. Jackson and I remained.

The Court: We don't care anything about that. Just answer the question.

A. They returned and said, and then for the first time I heard Mr. Watts' name; either Mr. Hanford or the lawyer said, I cannot tell which, "Mr. Watts of Louisville will represent us."

Q. Had you said anything to them about Mr. Watts?

A. No sir, it never occurred to me—

The Court: Just answer the question.

Q. Then what did you do after you learned from them that Mr. Watts would represent them? What did you do about the matter?

A. I went back to the hotel and telephoned to my brother my conclusion of the matter—I am entirely willing to state that if it is proper.

Q. That he was to appear for M. Zier & Co.?

A. No sir. I said this in substance to my brother. That I had seen these folks and that they had not determined the matter, but that Mr. Jackson was coming down to Louisville to consult with the Watts, I think I said, it is a firm; that he was coming down that night, and that they would determine the matter, and that I thought they would apply for a receivership, because I think I said to him, "Jackson takes the same view of it that I do: and if they send for you you can go over and consult with them."

Q. You know how Mr. Watts' name was brought into the consultation there in Chicago?

A. I have told you all I know on that subject. That is the first time I heard Mr. Watts' name brought into it.

Mr. Fairleigh: I would like for him to state fully.

Mr. LaFollotte: He said he has stated all they said.

A. That is all they said. I said something.

Mr Fairleigh: I want to know how he got Mr. Watts' name.

A. I don't know how they got Mr. Watts' name

Q. By the Court: The question is do you know how they got Mr. Watts' name?

A. Not a word. I said—

The Court: That answers the question. You are a lawyer. You know that it is not necessary, but just to answer questions.

Q. Was the suit instituted before you came back to New Albany?

A. Yes, sir; I did not get back to New Albany until—

The Court: You have answered the question.

Q. When did you return to New Albany?

A. I think on the evening of New Year's.

Q. How soon after you did return did you have a conversation with Mr. Watts the attorney for Ryerson and Sons?

A. I do not now remember.

Q. Did you have any conversation with him before the creditors' meeting that has been spoken of here?

A. I probably did. I saw him over there but I do not recall any conversation; it was just a casual conversation if I met him.

Q. Do you recall any conversation you had with him about having the creditors' meeting and the purpose of it?

A. No sir.

Q. Do you remember of having been present at that meeting?

A. Yes sir; I was there.

Q. Were you representing M. Zier & Co. at that meeting or representing the creditors, which?

A. I would say both.

By the Court:

Q. Which meeting was that?

Mr. LaFollette: The meeting in the court called the creditors meeting.

Q. You say you represented both a debtor and a creditor.

A. I would say I represented both.

Q. Both the debtors and the creditors?

A. I think so.

By Mr. LaFollette:

Q. Was there any statement made by you at that meeting to the court or meeting?

A. I think so.

Q. Did you understand that that was a matter that was being presented to the court as a court?

A. I understood that it was to take the sense of the creditors as to whether the court would order the plant to be operated to complete existing contracts and that the views of the creditors were to be taken.

Q. What was said to you or anyone to you either before the meeting or at the meeting about there being an order entered enjoining creditors from taking steps other than in that court?

A. Nothing, and I never expected any such thing.

Q. You did not know anything about that?

A. No sir, I did not know anything about that; I left before any order was entered.

Q. Do you know who formulated the order that was entered?

A. Mr. Watts was working on it at a table. I think he formulated it.

Q. Did you read it over?

A. No, sir—I left before

Q. You did not hear it read?

A. No, sir—I never heard it read.

Q. Was there anything said by you there at that meeting—either by you or any of the creditors, about what disposition had been made of the assets of the concern and about its solvency or insolvency, and the amount it would probably pay on its indebtedness.

A. I think the subject was generally talked over—all those things you have named.

Q. Did you say anything there about having paid the $9000 to Minnie Zier?

A. No, sir.

Q. Did any creditor say anything about that?

A. No, sir.

Q. Was there anything said at that meeting by Ryerson & Son about having recently received a credit on their claim of $3100?

A. Not that I heard.

Q. Was not the ability of the plant to pay money mentioned and talked about?

A. I think it was not the ability to pay money—I think the advantage and disadvantage of operating it was talked about.

Q. Did W. W. Watts represent Ryerson & Son at that meeting?

A. Yes, sir.

Q. Did he also represent the Receiver, the New Albany Trust Company?

A. Yes, sir.

Q. Was it not one of the questions that was being considered, the advisability of having the plant continue to operate and as an argument in favor of it, was it not made to appear that they had been able recently to make payments on their indebtedness?

A. I would answer the first part of that question yes. I have no recollection of anything being said about recent payments.

Q. Did not any of the creditors in talking about the advisability of continuing the plant speak of or inquire whether or not they had been making any money, whether or not they could make money if they would operate it?

A. Probably.

Q. Did not Mr. Watts, representing Ryerson & Son; say that it would be profitable because they had quite recently made payments on their debt of over $3,000.

A. I heard nothing of that kind.

Q. And you did not urge in favor of its operation that they had quite recently paid on an indebtedness, $9000?

Mr. Miller: He has already said there was not a word said on that subject and I object.

The Court: I think the point well taken.

Q. The question was not argued very fully as to those matters at all?

A. I do not remember that the question of payments was mentioned at all.

Q. Was there any objection made by any of the creditors to operating the plant?

A. I understood it was unanimous.

Q. After you came back from Chicago and talked to Mr. Watts about the business, was there anything said about bankruptcy proceedings before any were instituted?

A. No sir.

Q. Was there anything said by him to you either at the creditors' meeting or before about taking any steps at that meeting to prevent anything of that kind?

A. By Mr. Watts to me?

Q. Yes.

A. No sir.

By the Court:

Q. Then you say that that part of the order which attempted to enjoin the creditors from proceeding in any other court or any other suit except by intervention in that suit or action was without your knowledge?

A. Yes sir.

Q Without any authority from you; I did not expect it.

A. Yes sir, I did not expect it.

Q. The inference is that Mr. Watts put that in the order?

A. No sir.

Q. He was drawing the order?

A. I don't know who put it in. He was drawing the order. And I was informed at whose suggestion it was put in, but it was not Mr. Watts.

By Mr. LaFollette:

Q. When did you learn that bankruptcy proceedings were instituted?

A. I cannot say, but my impression is that I never learned of any bankruptcy proceedings, until Mr. Connor either came down with his order or some one told me that the summons had been served on Mr. Zier. I think he brought in the summons or subpoena.

Q. Did you know personally of the filing by Mr. Connor of the petition in the Circuit Court asking the receiver of the state court to turn over the property to him as receiver?

A. No sir.

Q. You did not know personally about them?

A. I was not present; I heard of it afterwards.

Q. Did you take any steps in connection with it or go to the court about it?

A. No sir I was not in court that day.

Q. Did you know that the petition was filed by Mr. Watts for the receiver asking an order to appear at Indianapolis and discuss the question of the jurisdiction of the two courts?

A. I heard that it was to be done and was done.

Q. Did you talk with Mr. Watts about it before it was done.

A. Yes sir.

Q. At your office or in the court room?

A. At my office. There was a few words said.

Q. Do you remember what was said? If so state it.

A. I think Mr. Watts asked me whether I thought if the matter was presented to Judge Anderson he would allow the receiver down there to continue to operate the property and my impression is I told him I thought Judge Anderson would permit the State receiver to operate the property. I think Mr. Watts said to me that he was going to telephone up either to Mr. Butler or Judge Anderson on that subject and the telephoning was done in our office, but I was working on a brief in the library some distance off and did not hear what was said.

Q. Did you know of the entry by the Floyd Circuit Court of the order continuing the petition of Mr. Connor asking that the property be turned over to him by the Trust Company?

A. No, sir.

Q. You were not present here when the question of jurisdiction was discussed before the Court?

A. No, sir.

Q. When following that did you learn that the statement had been made here that the Trust Company would turn the property over?

A. The next day.

Q. What conversation, if any, did you have with Mr. Watts or Mr. Sachs on the next day about the matter?

A. I think it was the next afternoon they came in the office and there was some talk about it.

By the Court:

Q. What afternoon was that?

A. I think it was Wednesday afternoon.

Q. What was said?

A. I do not recall that Mr. Sachs said anything about it, except that he was there, but Mr. Watts talked about arguing it up here; said that my brother had said that the Trust Company would turn over the property and that he said he would advise it. That was the substance of the conversation. In addition to that he said—do you want the whole conversation?

By Mr. LaFollette:

Q. Yes if there was anything further said about it?

A. He said he was very much—he thought he had been misunderstood by Judge Anderson and he appeared to be mortified about it, that he had not intended the construction that had been put on his acts and saying the things a man does under such circumstances where he thought he had been misunderstood. He talked at length.

Q. Was there anything said at your office on Wednesday afternoon about taking any other proceeding in the State court to hold the property in that jurisdiction?

A. No sir.

Q. When did you first learn that Judge Utz of the circuit court was objecting to turning the property over by the Trust Company?

A. On the following morning—forenoon.

Q. Where were you when you learned that?

A. In my office.

Q. From what source did you learn it?

A. From my brother Henry.

Q. Did he come and tell you at the office?

A. Yes sir.

Q. Then what did you do following that information?

A. I indicted. I dictated, I should say, a little note to Mr. Connor, that is here—based on what my brother had said to me, stating that he had filed a report and attached a copy of the report to it, stating that we had filed a report and that the Judge had orally remarked that we should or that he preferred, or something to that effect—asking that we not deliver the property to Mr. Connor until our report was filed, that we thought that report could be filed on the following morning and that if Mr. Connor could defer his demand until then it would relieve the receiver, or the Trust Co., or us, or something, or considerable embarrassment, but if he insisted, we were bound to say that good faith required that the property be surrendered to him and I told my brother to take that around to Mr. Connor and he asked me to go and see if I could not get the report accepted, and that was my first appearance.

Q. In the Court? When you went over to the court for that purpose who was present there?

A. Judge Utz. It was in his chambers, not in the court room.

By the Court:

Q. It was in vacation?

A. Yes, sir. Judge Utz, Mr. Watts, Mr. Sachs and I think Mr. Kelso were sitting in the corner and either the clerk or the deputy clerk. I am inclined to think it was the deputy clerk, Will Ruoff, that was sitting there?

Q. Had you learned then of the action of Judge Utz in refusing to accept the resignation?

A. No sir.

Q. What was said by you at that time and by Judge Utz in the presence of Mr. Watts and Mr. Sachs about the subject.

A. I cannot recall, except that while I was there I said either that my brother or the receiver had told Judge Anderson that the receiver would turn the property over to Mr. Connor and that not withstanding anything else or something of that kind, it was going to be done and was probably done.

I will correct one thing: when I went in Mr. Sauer the secretary of the company was there. My brother said to me, "If Fred Sauer is over there, send him over." And when I went in, I said, "Mr. Sauer, my brother wants you at the Trust Company," and he got up and went out and I said to Judge Utz, "It is probably done now." The conversation, I can not recall the words, but I think in a general way they were discussing whether the decision to turn it over was right or not, the law of the case. But I can not undertake to give what was said.

Q. Was there anything said by Mr. Sachs or Mr. Watts against turning it over.

A. No sir; not in my presence. I think I said in that conversation that Mr. Watts had advised it or agreed or promised it himself. I think I said that and he assented to it. I do not remember that Mr. Sachs said anything. I was talking to the Judge and I was there a very short time.

Q. Did you know at that time that there were arrangements being made to have Mr. Kelso appointed receiver instead of the Trust Company?

A. No sir.

Q. There were not any proceedings taken while you were there by the Judge?

A. Not in my presence and not while I was there.

Q. When did you learn, if you did, that some proceedings were taken to have the Trust Company cited for contempt of court?

A. In the afternoon I think of Thursday.

Q. Did you go before Judge Utz in regard to that matter with the president of the Trust Company?

A. Yes sir.

Q. Who was present at that time as near as you can remember?

A. The same persons. There may have been some others in there.

Q. D. A. Sachs was present?

A. I won't say whether Mr. Sachs was there.

Q. Was Mr. Sachs there?

A. But I think they were both there.

Q. Was there any one there acting in the matter of having proceedings taken against the Trust Co. or any attorney representing that proposition?

A. Apparently not.

Q. Was the court doing that on his own motion?

A. I cannot say about that.

Q. Or rather the judge, there was no court, I guess. Did you make any written answer for the Trust Co.?

A. No sir, no written answer.

Q. Did you know that there were charges also against Watts for contempt?

A. I think so. I think the rule contained his name.

Q. Do you know what he said or did in regard to answering that citation?

A. No sir.

Q. You were not present when any steps were taken?

A. In fact I know nothing except what I said and the judge said when I went in with the president of the Trust Co.

Q. At that time you knew that Mr. Kelso was to be appointed receiver or had been?

A. No sir, I did not.

Q. You did not know it yet?

A. He had not been.

Q. He had not been appointed?

A. Not to my knowledge.

Q. When did you learn that he had been appointed?

A. Saturday morning.

Q. He had been appointed the day before?

A. I learned it from the newspaper and I asked my brother about it and learned it from him.

Q. Did you know during the evening of Friday that proceedings were being had and that the sheriff had gone down and taken the property from Mr. Connor?

A. No sir, after supper I did not go out in town?

Q. You did not learn that until Saturday?

A. I read it in the paper that was my first knowledge of it.

Q. A matter is suggested that I want to ask you about. At the time that you went over to say to the Judge that you would turn over the property in response to the statement that has been made here that it would be turned over, and while talking to the Judge on that subject, did Mr. Sachs ask you some question in regard to the act of the law and did you reply to him that you did not want to be interrupted? When he asked you if you had turned the property over—do you remember that incident?

A. No sir.

Q. So far as the matter of turning over the property and its being retaken by the sheriff and being put into the possession of Mr. Kelso, you have stated all you know about that? What further do you know about that?

A. I have stated all I know about the retaking of the property. There is much I know about the turning over of the property by the Trust Co., the efforts to turn it over that I have not stated and would be glad to state it if permitted, if you desire to know.

Q. You did turn it over?

A. Yes sir.

Q. That is substantially all there is of that, except the details which I do not care for?

A. Very well.

Q. Since the property was turned over, I want to ask you a little further about the matters that we were inquiring about prior to the institution of the suit. You have also returned to Mr. Connor, or paid to him, have you not, a part of the money that was paid you by M. Zier & Co.

A. I returned to Mr. Connor the $600, attorneys fees, less expenses to Chicago, $50 for that service. I gave him a check for $534.80. You have the check and letter I suppose.

Q. You may state if this note and the receipt attached is the paper you received and on which you first made payment of the money.

A. This is the note which was paid in full and taken up. This is the receipt showing the application of the whole $9,000 and identifying the other note on which the balance was credited. This is a statement of intention, I do not know what you would call it, written by Michael Zier at the time and delivered to me.

Q. That was delivered to you at the time you paid the money?

A. Yes sir, part of that transaction.

Q. Since that time you paid back the $600 less expenses to Chicago and $50.

A. Yes sir.

Q. (By the Court:) What was the $50 for.

A. The $50 was what I estimated the work performed for Mr. Zier at Chicago in getting Ryerson to bring the receivership suit—for those services, and there was $15.00 expenses.

Q. (By Mr. Lafollette): If you were returning the fee you received in the first place, why did you not return it all.

A. I thought that having performed only that service and being unable to perform any service while I might have kept it as it was paid me as a fee and while I thought it was usual to charge an insolvent a fee when you took his business, I had money there I had not earned and could not earn and I preferred for my own sake after talking to my brother to turn it back to these creditors. At that time I did not know how this money had been gotten out of bank, that the bank had paid the money upon checks that purported to be for payroll. Having learned that from Mr. Connor, I said under the circumstances, "I think it all ought to be paid back," and he so understood.

By the Court:

Q. All of what?

A. Of the $600, that we got. I did not know until Sunday night about these checks, he brought them up, I never saw any papers or books, except the stock books.

By Mr. LaFollette:

Q. Did you have any notice of the manner in which Michael Zier had taken the money out of the concern, that is under the color of being weekly payrolls and appropriating $1000 of it to this fund?

A. No sir, never; never.. I would not have touched it if I had.

Q. After you had paid back the $600, less $50 and expenses, did you also give Mr. Connor a guaranty or agreement that you would pay back to him for the benefit of the Zier estate the whole amount of the $9000.

A. There is the agreement, will you read it?

Q. "Dated March 9, 1903. To F. D. Connor, receiver, M. Zier and Company, bankrupt. December 29th, 1902"—1903 I guess that is intended for?

A. No that is right.

Q. December 29th, 1902, I paid E. F. Mergel for Mrs. Minnie Zier, the sum of $9000, of the funds of M. Zier and Company. Disclosure made by your examination of the books and papers during the last few days, satisfies me that this money still belongs to M. Zier & Co. and should be returned to the estate of said bankrupt. In view of the fact that the money passed through my hands, I hold myself

responsible for its return and guarantee it shall be paid to you on demand. CHARLES L. JEWETT."

A. Yes sir, indeed, that is just the way I feel now.

Q. Why do you bind yourself for that?

A. If I am allowed to answer that fully I would be glad to do so.

By the Court:

Q. You are always allowed to answer a question why.

A. Because I think that I ought not in view of all the facts to have handled the money and paid it over. Because I believed and still believe the transaction as to me was entirely legal, but when I find out that these men had been taking the money out of bank of their corporation by means of making a check for wages when in fact it was being accumulated—I think I ought to have been more careful. I inquired particularly of Mr. Zier about this and Mr. Zier told me sometime before—

The Court: You are giving your reasons now.

A. Unless I can make them full, I can not explain it. I want to state all the facts as to my connection with the money that moved me, because I thought that was due me and I would be very glad to state it.

Q. Proceed then.

A. After Dr. Zier's death, sometime, I do not know how long after the payment of these notes by Mrs. Minnie F. Zier, $18,000 in bank, Mr. Zier told me that he had promised and intended to pay it back and proceeded about how he thought of his dead brother's widow's money being taken that way and said that he was going to pay it back as he could. I knew that he was paying people as they pressed him. I never knew until he mentioned to me the fact that he had ordered these papers sent to me—I never knew but what that amount had been paid to Minnie Zier and I did not know how he took it out or anything of the kind, and when he suggested that he wanted the papers sent down and wanted it paid, I wrote to Mr. Mergel and wanted to know all about Mrs. Zier's connection with the concern, whether she had ever been a stockholder or creditor, and when I took the money I took it and paid it myself with the thorough belief that this company had a right, as I believed, and still believe, to pay any valid obligation, and my point was to know that the obligation was valid, that it was not some simulated family indebtedness. When I saw the notes assigned by Mr. McCullough, the President of the New Albany Bank, I had no doubt about the validity of the indebtedness, but I ought not to have handled the money at all. I see that now. I ought to have been more careful. I asked Mr. Zier stood on the books, how he paid it out.

And he said it was charged to him, Michael Zier, treasurer, for Minnie Zier. I never saw the books in my life. I don't see why I did not go and insist on looking at the books and feeling that way, I feel without reference to anything else that unless Mrs. Zier's agents, knowing these facts, sees fit to pay that money back, I have felt that I would be on better terms with myself to pay it back. I did not include my firm. I said I would myself pay it back.

Q. Is Mr. Mergel a lawyer?

A. I think not. He is the vice-president of a bank. That seems to be his business.

Q. In view of your knowledge of the bankrupt law and knowing that this was a preferred payment that the company was making, and in view of possible bankrupt proceedings, did you not arrange with Mr. Mergel that in the event bankruptcy proceedings were instituted that would probably necessitate the return of the preferred payment, that he was to hold this money subject for future demands if it became necessary to have it returned?

A. No sir; the paper there written by Mr. Margel explains that.

Q. Did you at the time that you came back from Chicago and the institution of these proceedings talk with W. W. Watts about this payment and the circumstances under which it was made, and so forth?

I never talked with Mr. Watts about the payment and so forth, no sir.

The Court: I wish you would call the attention of the witness to the letter of Mr. Mergel and read it.

Q. Is this letter dated December 29th, the letter to which you refer?

A. Yes sir.

The letter referred to was read as follows:

"Dec. 29th, 1902.

M. Zier, Esq.:

In reference to the payment made by Mr. Jewett on behalf of your company will say that I know that my client is earnestly desirous that your matters result to your satisfaction and advantage. In case same money could be used to advantage in making adjustments and clearing up all the matters you wish to have adjusted and Mr. Jewett has said you wished to get a clear settlement with everybody, including my client, I would recommend to my client to use the funds for that purpose by way of assistance. This is all I care to say. Yours truly,

E. E. MERGEL."

The Court: Is that the explanation?

A. Yes, sir; that refers to his getting a settlement with his creditors.

The Court: When you answered the other question no and said the letter explained the situation, you meant that letter explained it?

A. That is it; yes, sir.

By Mr. LaFollette:

Q. Did you make any explanation of this payment and letter to any of the creditors in connection with the business after your return from Chicago?

A. No, sir.

Q. Your return or statement that you have made to Mr. Connor and here is the only statement you have made about it up to that time?

A. Up to that time.

CROSS-EXAMINATION.

Questions by Mr. W. M. Smith:

Q. I understood you to say that on Thursday afternoon when you returned to the court house you was not quite sure Mr. Sachs was there or not.

A. Yes sir. My impression is he was, but I am not sure. I think he was there.

Q. You are not sure Mr. Watts was there on Thursday afternoon, either, are you?

A. My impression is he was. I did not sit down. I just walked in with Mr. Mosier and stood at the table and addressed Judge Utz. I did not sit down.

Q. May it not be that you are mistaken about their presence that afternoon?

A. Yes sir; it may be. They may not either have been there. I may have seen them on the street.

Q. Do you know what time in the evening it was that you returned to the court house?

A. I think it was the middle or after the middle of the afternoon.

W. C. Utz, a witness called on behalf of the government, being duly sworn and examined by LaFollette, Esq.

Q. You may state your name to the Court?

A. William C Utz.

Q. Where do you live?

A. New Albany, Indiana.

Q. Are you the judge of the Floyd Circuit Court?

A. Yes sir.

Q. How long have you been on the bench of that court?

A. Since November 26, 1898.

Q. Do you hold court in any other county or is that the only county in your circuit?

A. Floyd County is a judicial circuit, the fifty-second.

Q. Are you acquainted with Mr. W. W. Watts, an attorney?

A. Yes sir.

Q. Does he practice in your court.

A. The first he ever practiced in my term of any term of court was the January term, 1903.

Q. Was that at the time of filing the case of Ryerson & Son against M. Zier & Co.?

A. The Ryerson suit was filed on the 30th of December, 1902, in vacation.

Q. Had you been acquainted with him before that time?

A. I had no personal acquaintance with him previous to that time; I knew him by sight.

Q. Had you been acquainted prior to that time with D. A. Sachs, an attorney of Louisville.

A. No sir.

Q. When did you become acquainted with him?

A. On the 18th day of February.

Q. You are acquainted with Charles L. Jewett and H. E. Jewett?

A. Yes sir.

Q. You are acquainted with Charles D. Kelso?

A. Yes sir.

Q. They are each members of the bar of your court?

A. Yes sir.

Q. You are acquainted with Mr. Hester, who is also a member of your bar?

A. Yes sir.

Q. Tell the court whether or not you had any information relative to the institution of the suit by Ryerson & Son against M. Zier & Co. prior to the day of its being filed?

A. I had not.

Q. When did you first learn that such a case was pending in your court?

A. When Mr. Watts and Henry E. Jewett came into my office with the suit about two o'clock on the afternoon of December 30th.

Q. What statement, if any, was made to you at that time by either of them?

A. I think it was stated in a general way by Mr. Watts and by Mr. Jewett about his indebtedness, that he was unable to meet it. Mr. Watts handed me the complaint showing the amount of the indebtedness to Ryerson & Son on which they had a prayer for the appointment of a receiver. I read the complaint and about that time Mr. Zier came in.

Q. Michael Zier?

A. Yes sir.

Q. You say he came in?

A. Yes sir, he came in and consented to the appointment of a receiver.

By Mr. LaFollette:

Q. What was said to him and by him after he came into the room?

A. I cannot state exactly what was said to him. I know there was some discussion or some talk as to the fact of him being insolvent and unable to meet his obligations, and it was agreed that the receiver should be appointed and it was appointed and the receiver was appointed in the usual way.

Q. That was the same day that the petition had been filed.

A. Yes sir.

Q. Who was appointed receiver?

A. The New Albany Trust Company.

Q. Did you fix a bond?

A. I think under the statute they are not required to execute any bond. They did not execute any bond.

Mr. Miller: That is a trust company.

A. Yes sir.

Mr. Fairleigh: And their stock is the security.

Q. Was Mr. Jewett representing or acting for the Trust Co. or was Mr. Watts?

A. As I understood, Mr. Watts was acting for Ryerson & son and Mr. Jewett was there as the attorney of Mr. M. Zier & Co.

Q. Up to that time there was no one representing the Trust Co.?

A. No sir.

Q. Who was it indicated to you that the Trust Co. would accept the trust?

A. I understood from both what Mr. Watts and Mr. Jewett said that it was agreed that if it met my approval that the Trust Company should be appointed.

Q. What else, if anything, was done that day?

A. The order was made and signed appointing the Trust Co. and the Trust Co. qualified that afternoon, as I recollect it.

Q. How soon after that did your court convene?

A. A very short time. I think it was either on the 6th or 9th of January, that it convened. I would not be positive.

Q. What was the next step, as you remember it, in connection with that case that was taken?

A. I think there was some matters in regard to some contracts that were unfinished, they were of minor—little importance, about which I made an order.

Q. Do you remember of a meeting being arranged, known as the creditors meeting?

A. Yes sir.

Q. That arrangement began on the 16th day of January, when the Trust Co., as I remember it, filed a petition. And on that petition a notice was ordered to be given to the creditors, and the petition showed that there was some unfinished contracts, and some creditors claiming they had a right to have certain property delivered to them.

Q. That meeting of the creditors, so-called, was held in open court, was it?

A. Yes sir.

Q. Tell the court whether there was at that time any statement made to you as the court about having an injunction entered enjoining creditors from taking any steps other than by intervening petitions in that case?

A. Yes sir, that was one of the last things that occurred?

Q. Who proposed that to you?

A. I think it was Mr. Stotsenberg. He was representing some of the creditors and I am inclined to believe that the matter was discussed not in open court, but by the attorneys while the court was still in session. I think Mr. Stotsenburg and one or two attorneys took part in the talk among themselves.

Q. Was Mr. Watts present on that day?

A. Yes, sir.

Q. For whom did he appear at that time?

A. For the receiver, the New Albany Trust Co.

Q. Who was appearing for Ryerson & Son?

A. I understood at the beginning that Mr. Watts was acting for Ryerson & Son at the time of the institution of the suit.

Q. He never withdrew his appearance for them?

A. No, sir.

Q. He still stood on the record as attorney for Ryerson & Son?

Q. Yes, sir.

Q. And he also appeared as the attorney for the receiver?

A. Yes, sir.

Q. And on the day of the creditors meeting, did he make any statement on behalf of his client, Ryerson & Son?

A. If he did, I do not recall it now.

Q. Who prepared the entry that was put upon the record that day?

A. I think Mr. Watts did.

Q. Was that read over to the meeting before being entered?

A. I think not.

Q. Did you read it over yourself?

A. Yes sir.

Q. Did you know that it provided for an injunction that has been talked about, enjoining them from taking any other steps?

A. Yes sir.

Q. Did you make any change in it after it was drawn, or did you approve it as prepared?

A. I made a change. There was an injunction against Hoerter and Hester who appeared as attorneys for the Inland Steel Co., and I said to the attorneys, "I don't think that ought to go into the order, that I thought they were acting in the belief that they had a legal right to do what they were doing and I struck that out of the order.

Mr. Fairleigh: He is talking of the original order.

A. No sir on the 24th of January, at the creditors meeting.

Q. It had that in it when it came from Mr. Watts to you?

A. What provision do you refer to?

Q. The one enjoining Hester and so forth?

A. Yes sir.

Q. I am asking about the order they had on the day when they had the creditors meeting?

A. Yes sir, that is the order.

Q. I don't have these dates in mind. Let us get that straightened out.

A. I don't want to make any mistake.

Q. What I mean is this: you remember distinctly what they call a creditors meeting?

A. Yes sir I do.

Q. Was it at that meeting that an order was entered on the record of your court enjoining the creditors from taking any steps other than by intervening petition in the case of Ryerson & Son against M. Zier & Co.?

A. Yes sir, I think so.

Q. Do you know the date of that?

A. That was on the 24th of January, 1903. I want to make this statement in that connection: I do not think that order contained that provision as to the attorneys. I think I am in error as to that and I want to make that statement?

Q. When was that order?

A. It was made later on the 18th of February.

Q. The order which you speak of as having been prepared enjoining Hoerter and Hester from taking certain steps in behalf of the Inland Steel Co., was that made at that meeting or at a later meeting?

A. At a later meeting, I recall that now.

Q. So far as you have stated in regard to that, you desire to correct it?

A. I do.

Q. Was there such a statement made at any time or prepared for you to enter of record enjoining Hoerter and Hester from taking certain steps?

A. Yes sir.

Q. When was that made?

A. Fourteenth of February, the last day of our court.

Q. By whom was that prepared, if you know?

A. I couldn't state that. When I got the order it had been prepared.

Q. Who brought it to you?

A. My recollection is that W. W. Watts did.

Q. You may state to the court whether or not that provision that was in the prepared order seeking to enjoin the attorneys, Hoerter and Hester, from proceeding in the case in certain ways, was stricken out by you before the same was entered of record?

A. Yes sir.

Q. In that same connection, I want to ask you if at that time the bankruptcy proceedings had been instituted in the district court?

A. At what time?

Q. At the time this order was presented seeking to enjoin the attorneys from taking steps?

A. I think so. That morning was the first official information I had of the proceeding in bankruptcy.

Q. I want to ask you if at that time there had been filed in your court by Mr. Connor, receiver in bankruptcy, a petition that the property of M. Zier & Co. be turned over to him?

A. The petition of Mr. Connor was filed before that order was entered.

Q. But the same day, was it not?

A. Yes sir.

Q. Then after that was filed, what attorney appeared and sought for an order enjoining these attorneys from taking the steps you have spoken of?

A. W. W. Watts was appearing for the receiver and seeking to obtain an order directing him to come to this court on the following Monday.

Q. By the Court: And he also sought and obtained an order enjoining the Inland Steel Co., and the marshal and receiver of this court from proceeding any further in this court?

A. Yes sir.

Q. Mr. Watts procured that order from you?

A. Yes sir.

By Mr. LaFollette:

Q. That entry was presented to you by Mr. Watts?

A. Yes sir.

Q. And that had in it originally when he brought it to you the injunction against the attorneys also?

A. Yes sir.

Q. Then striking that out you spread it of record, enjoining Mr. Connor and the Inland Steel Co. from proceeding in the bankruptcy proceedings?

A. Yes sir.

Q. And that was at the solicitation of W. W. Watts, attorney for the New Albany Trust Co., the receiver in the state court?

A. Yes sir.

By the Court:

Q. What did you do with this petition that Mr. Connor the receiver of this court filed in your court asking you to direct your receiver to turn the property over to him?

A. The petition was filed and the entire morning was taken up in the business of the court.

Q. The question is what did you do with Mr. Connor's petition?

A. I did not do anything, because, as I understood it there was to be some order prepared in regard to the matter, Mr. Hester and Mr. Watts, as I understood it, were to present the matter to me. Mr. Hester at that time did not seek the order—

Q. Did you not testify here in this court on the hearing of the contempt proceedings against Kelso and others that you continued that petition until the next term of court?

A. Yes sir that is what I did, we had no time to take it up.

Q. When did the next term of your court begin?

A. The ninth day of March.

Mr. Miller: We have not been able to find this petition filed by Mr. Connor. The entry is there, but the petition is not there.

Mr. Hester: Is not that here in the petition he filed here?

Mr. Miller: If we could get hold of that we would like very much to have it in the record with the rest of the papers.

Mr. LaFollette: If the court will permit, I think I will let Mr. Hester examine as to the proceedings down in the court. He was party to the proceedings and he may ask the questions.

By Mr. Hester:

Q. The petition of Mr. Connor intervening in the case of Ryerson & Son, against M. Zier & Co. was filed shortly after court convened in the morning? Was it not?

A. I think so.

Q. And before Mr. Watts came in?

A. I believe you are right about that.

Q. Then it was stated by Mr. H. E. Jewett that Mr. Watts would be in presently with another petition or something to that effect to you?

A. Yes sir.

Q. Nothing further was said then on the strengh of that statement about the intervening petition but Mr. Watts' appearance was awaited?

A. That is correct.

Q. After that Mr. Watts came in and addressed the court and stated that Mr. Connor's petition had been filed showing that he had been appointed receiver by the United States District Court and asked him the court to require him to enter a full appearance.

Mr. Fairleigh: Are you not leading a little too far?

Mr. Hester: I think the witness would be influenced by leading questions. These matters have been gone over so often.

Mr. Fairleigh: I don't mean to be captious, but don't lead too far.

Q. What was said about entering a full appearance, if you remember?

A. My recollection is that Mr. Watts asked you whether you entered a full or general appearance?

Q. What reply was made to that?

A. You said the paper would speak for itself.

Q. Did Mr. Watts read the petition to the court, to you?

A. He did not.

Q. You understood the nature of it from what was stated, I suppose?

A. Of course, I could not state explicitly, I could state in a general way.

Q. To refresh your recollection, did I not state that it was a petition showing Mr. Connor's appointment, embracing a certified copy of the order of appointment of this court?

A. That is my recollection.

Q. Then what did Mr. Watts do in respect to filing the petition prepared for the New Albany Trust Co.?

A. He filed the petition.

Q. Let me go back just a moment. Before he filed that, what did Mr. Watts say about how and when it had been prepared as to his having been up all night?

A. I could not state whether he said that at that time?

Q. Immediately before he began reading the petition?

A. Yes sir, I think he did.

Q. What did he say about that?

A. I think he stated he had been up a good part of the night preparing the petition.

Q. And he proceeded to read the petition, did he?

A. Yes sir.

Q. Then you asked him I believed if he had an order prepared on the petition?

A. I would not be positive whether I asked him that question or not.

Q. But there was an order submitted at that time?

A. Yes sir.

Q. You say that order embraced an injunction against the Inland Steel Co. and the other petitioning creditors in bankruptcy and against Mr. Connor as receiver and Mr. Pettit, as United States marshal, and also against Judge Hoerter and myself against further prosecuting any suit in this court?

A. Yes sir.

By the Court:

Q. Mr. Watts brought you that order?

A. That is my recollection.

Q. Was it not prepared on the same kind of paper and by the same typewriter?

A. I think so.

Q. And both brought in at the same time?

A. Yes sir.

Q. After you told Mr. Watts in open court that you would not consent that an injunction would go against the attorneys and directed him to strike that out, state what afterwards was said by him to you in that respect later in the day at any time?

A. I don't know.

Q. Was anything more said about the injunction against the attorneys on the street or in the clerk's office.

A. I don't recall it if there was.

Q. Don't you remember that that order, after the names of the attorneys had been stricken out of the part providing for an injunction—that it was interlined and the names put in a second time and brought to you a second time?

A. It may have been.

Q. And that you then a second time instructed Mr. Watts that you would not consent to an order of that kind?

A. I think that is correct.

Mr. Miller: I would like to inquire if testimony or questions can be more leading than that?

The Court: It may be possible, but the witness don't seem to remember it until suggested.

Mr. Hester: I would have a right to refresh his recollection about those details even by leading questions.

The Court: Yes; this witness is supposed to understand what questions are and he can answer himself without being led.

Q. Then what was done about striking the names out a second time if anything?

A. They were stricken out.

Q. And it went on the order book as amended that way?

A. Yes sir.

Q. Do you remember when it was entered of record?

A. I could not state that; it was probably sometime after the court adjourned, as the clerk was considerably behind with his work as he usually is at the end of the term.

A recess was here taken for dinner after which the direct examination of Judge Utz was continued by Mr. Hester as follows:

Q. In this same order of which you were speaking before lunch, you may state what, if anything, with reference to punishing these different parties for contempt besides the injunction you have already spoken of?

A. What order do you refer to?

Q. The one that was entered on Saturday?

A. The last day of court?

Q. The last day of the January term of court.

A. Yes sir, I think there was some provision of that kind in the order.

Q. Will you state to the court as near as you can what that provision was and against whom it was directed?

A. I think it was directed against the Indland Steel Co., the Day Time-Register Company and John C. Thurston.

Q. They were the petitioning creditors in these bankrupt proceedings?

A. Yes sir.

Q. And against whom else?

A. Against Mr. Pettus.

Q. Mr. Pettit?

A. Yes sir, if that is his name, the United States marshal and Mr. Connor.

Q. As receiver under appointment of this court?

A. Yes sir.

Q. In the order as first submitted to you, did the contempt provisions in that order also apply to the attorneys in the case?

A. Yes sir.

Q. That was Judge Hoerter and myself?

A. Yes sir.

Q. You know whether or not Judge Hoerter had ever had anything to do with this matter?

A. Nothing except I understood that Judge Hoerter and yourself were attorneys for the Inland Steel Co. That is all I can state.

Q. You may state to the court what Mr. Watts' attitude was in the matter when you stated to him that these contempt proceedings should not apply to the attorneys in the case, as to his being put out about it?

A. Well, he thought it ought to go in.

Q. Did he make any further remark to you after your remark from the Bench that you thought it ought not to go in?

A. I think Mr. Watts made some statements after that.

Q. When was it and when was it?

A. He said he thought that ought to remain in, but he was willing to leave it out.

Q. And it was stricken out a second time?

A. Yes sir.

Q. When did you first see Mr. Watts and Mr. Sachs after the return of Mr. Watts and Mr. Jewett from Indianapolis where they had attended the hearing of this case on the 16th and 17th of February?

A. On the afternoon of February 18th.

Q. That was Wednesday afternoon?

A. Yes sir.

Q. Where did you see them?

A. At my office.

Q. In the court house.

A. In the court house.

Q. Had you any arrangement to meet them there?

A. I think not.

Q. What time of day was that?

A. I think about two o'clock in the afternoon.

Q. Did you know they were coming?

A. My recollection is that Henry Jewett informed me sometime during the morning that they would be over sometime in the afternoon.

Q. How did he inform you of that?

A. I think he told me.

Q. Did you meet him?

A. Yes sir.

Q. Where did you see Mr. Jewett?

A. I think he was in my office on that morning.

Q. On some other business or on this?

A. I do not know what his business was.

Q. Did he have any other business there?

A. He did not state any.

Q. And he said that Mr. Watts and Mr. Sachs would see you in the afternoon in your office?

A. I am not certain that he mentioned Mr. Sach's name. I won't be certain of that, but I know he mentioned Mr. Watts.

Q. And it was in pursuance of that understanding that you were at your office that afternoon?

A. I would have been there anyway.

Q. It was in vacation?

A. Yes sir.

Q. Ordinarily, are you at your office in vacation?

A. Yes sir.

Q. What time did they come?

A. About 2.00 in the afternoon.

Q. Were they alone?

A. Yes sir—no, I beg your pardon, Henry Jewett came with them.

Q. Do you know where they came from?

A. No I could not state.

Q. Do you know where they had been before they came?

A. I do not.

Q. Did they say anything about where they had been?

A. Not to my recollection.

Q. What did they say was the purpose of their visit after they came in?

A. I do not know that they stated the purpose of their visit.

Q. What did you understand to be the purpose of their visit?

Question objected to by the defendants.

The Court: What did they say?

A. They came in, and as I recollect it, Mr. Watts—I think it was on that afternoon—he had a piece of brown paper that he had written a statement on in which he had stated that he had agreed at Indianapolis here with the court to advise the New Albany Trust Company to turn over the property to Mr. Connor the receiver of this court.

Q. That was stated in the paper?

A. Yes sir.

Q. Did he submit that to you?

A. Yes sir.

Q. Did you read it?

A. Yes sir.

Q. Then what was said?

A. I think Mr. Jewett also said that he wanted also to file a similar request.

Q. On behalf of whom?

A. On behalf of the New Albany Trust Company.

Q. As vice-president, I suppose?

A. He did not state, as to the vice-president. In behalf of the New Albany Trust Co. to turn over the property, but he didn't have the paper prepared, but that he would have it prepared probably by five o'clock.

Q. What was done or said about the paper submitted by Mr. Watts, by him or yourself?

A. There was nothing done that afternoon about it.

Q. What was said?

A. At that time?

Q. Yes.

A. Mr. Watts said that he wanted to comply with his promise to the judge of this court.

Q. And Mr. Sachs was there at the time?

A. Yes sir.

Q. What did he say?

A. Then the question as to the jurisdiction came up.

Q. Who brought that question up?

A. I think Mr. Sachs.

Q. What did he say?

A. Mr. Sachs was very positive in his opinion that the Floyd Circuit Court had jurisdiction over the property.

Q. Now judge let me ask you, did Mr. Sachs say that and discuss that question in an abstract way, or was it with a proposition that he had in mind.

Mr. Miller: If Your Honor please I object to that.

The Court: That is not proper; let him state what took place there and all that took place.

A. After that there was a general discussion, and Mr. Sachs did most of the talking.

Q. What did he say?

A. He simply said that the Floyd Circuit Court had jurisdiction over the property.

Q. Did anybody else discuss that legal proposition?

A. Yes I think that was Mr. Watts's opinion, and I think Mr. Jewett coincided with that view.

Q. Notwithstanding then, that Mr. Watts had filed a paper in which he offered to turn the property over and in which he sought to have the Floyd Circuit Court release its jurisdiction, he still maintained that the Floyd Circuit Court still had jurisdiction to retain the property?

A. I think so.

Q. How long did that meeting last?

A. Probably an hour.

Q. And were all these parties there during that time?

A. Yes sir.

Q. What else was said, judge?

A. I couldn't state that; that was the substance of what occurred.

Q. Were any other papers filed?

A. No, not that afternoon; Mr. Jewett informed me he thought he could not get that paper ready that afternoon.

Q. Was there any discussion as to steps to be taken afterwards?

A. None that I know of, except I will say this, that I stated to Mr. Jewett not to turn the property over, that I wanted to consider the matter further, and I wanted to consult some authorities.

Q. Did they submit any authorities that you remember?

A. No, I had some authorities.

Q. Were any authorities referred to you by either of the gentlemen at that time?

A. No.

Q. To refresh your recollection I will ask you whether anything was said about some cases, some bankruptcy cases that had been tried in which these parties represented the prevailing parties either in the circuit court of appeals for Kentucky or in the United States courts?

A. If I recollect that correctly, Mr. Hester, that was the next morning.

Q. Well did you have some arrangement with them in regard to meeting the next day?

A. No sir, I didn't have any except that I was to let Mr. Jewett know the next morning what was—what I thought about it in regard to turning over the property.

Q. Did you meet the gentlemen the next morning?

A. Yes.

Q. Where?

A. At my office.

Q. What time?

A. I should say about ten o'clock; now it was earlier than that; about nine-thirty, I expect.

Q. By what arrangement or notice was it that they came, if any?

A. Well I wouldn't state positive whether it was agreed or understood before they left that afternoon that they were to be back the next morning or not: I couldn't state that.

Q. Do you know anything about who arranged to have them come back the next morning?

A. Not unless it was agreed or understood there.

Q. You think it may have been understood before they left there?

Mr. Miller: I object to that.

A. I couldn't state positively about that. That is as near as I can state.

The Court: Come to the fact about what took place.

Q. Did you notify either of them any further that morning to come to your office?

A. No sir.

Q. Well who came?

A. I think Mr. Watts and Mr. Sachs came together, and then later Mr. Henry Jewett came in.

Q. How long after was it that Mr. Henry Jewett came in?

A. Well a few minutes; I don't know; it was not very long.

Q. Well what took place at that meeting?

A. I think there was very little said while Mr. Henry Jewett was there; I am not sure that even sat down; he walked in and I think about that time Mr. Sauer came in, the secretary of the New Albany Trust Company, and Mr. Henry Jewett said he would go back to the office, and his brother would come in and represent the trust company.

Q. He stayed but a short time?

A. A very short time.

Q. That left Sachs and Watts there with you alone?

A. No; I think Kelso was there

Q. Now what was said by either of these gentlemen in regard to turning over the property at that time if anything was said?

A. I do not remember of any discussion of it up to that time. We were waiting for Mr. Jewett to come over.

Q. C. L. Jewett?

A. Yes sir.

Q. Did he afterwards come?

A. Yes sir, in a short time.

Q. What did he say if anything about it?

A. He came in and Mr. Sauer was there and he told Mr. Sauer that he was wanted at the office of the trust company so Mr. Sauer left the room.

Q. Did he say what he was wanted for?

A. I don't recollect that he did.

Q. Then who carried on the discussion after Mr. Sauer left?

A. When Mr. Sauer left, Colonel Jewett made his statement that his brother had promised the judge of this court to turn over the property and that Mr. Watts had advised that course and had promised that to the judge of this court, and in good faith they were going to do it, and he talked at some length about the matter and during his statement of it, Mr. Sachs interrupted him, and asked him if the property had been turned over and Mr. Jewett made some remark that he did not want to be interrupted or something of that kind, and then Colonel Jewett completed his statement and got up and left.

Q. That was all he said?

A. Yes, sir, all that I recall.

Q. After Mr. Jewett left, what took place?

A. Then it was agreed by Mr. Watts and Mr. Sachs that Mr. Kelso was to take the receivership.

Q. That is take the receivership of the M. Zier and Company property in place of the New Albany Trust Company?

A. Yes sir.

Q. Had there been any resignation offered?

A. Colonel Jewett brought in the report asking to be permitted to make the report, and resigned.

Q. He did that on Thursday morning?

A. When he came in.

Q. That report was filed in writing, was it not?

A. And it was after that that Mr. Sachs asked if the property had been turned over?

A. While Colonel Jewett was making his statement is my recollection.

Q. And Jewett did not answer that?

A. He said, I think, what I said.

Q. But he did not answer the question whether the property had been turned over or not.

A. I don't think he did.

Q. Do you know whether it had been turned over or not at that time?

A. No sir, I do not.

Q. Do you know whether the New Albany Trust Company as receiver obtained the possesion of all the property that belonged to M. Zier & Co. and had it in possession at this time?

A. I do not quite understand the question.

Q. I mean do you know whether all of the property of M. Zier & Company, without any exception, was taken possession of and at that time held by the Trust Company as receiver of your court or if there was some property that they did not get, if you know?

A. Do you refer to the $9000?

Q. No. Did the receiver of your court upon its appointment get all of the property and assets of M. Zier and Company?

A. So far as I know. I was under that impression.

Q. Sauer left then, to go to the office of the Trust Co.?

A. Yes sir.

Q. And Jewett went back to his office and that left Kelso and Watts?

A. Yes sir.

Q. Now you may state further what discussion was had in regard to this property being turned over if there was anything said?

A. I think it was agreed there that Mr. Sachs—

Mr. Miller: I think I will ask the judge to say what was said:

The Court: Instead of saying "it was agreed," just state what was said and who said it.

A. I think Mr. Kelso asked Mr. Sachs to represent him as his attorney and Mr. Sachs agreed to do it.

By the Court:

Q. What else was said about that matter?

A. I think that was all as to that that I recall now.

Q. Was there any talk before that about the appointment of Mr. Kelso and that he should be appointed?

A. As I said a moment ago that was agreed.

Q. What was said by Mr. Sachs?

A. Mr. Sachs and Mr. Watts, both, as I recollect, stated that they would bear the expense whatever it might be for the receiver in the prosecution of any action.

Q. That was after it had been agreed on that Kelso should be appointed?

A. Yes sir.

Q. But what was said previous to that time, by either of these gentlemen about Kelso being appointed—how was Kelso's name first mentioned as a prospective receiver?

A. I think that came about in this way: on Wednesday afternoon, after Mr. Sachs, Mr. Watts and Henry Jewett were at my office, I called Mr. Kelso over the telephone and asked him if I could see him at his office the next morning at eight o'clock, that I wanted to talk to him, and he said he would be there, and the next morning I went to see Mr. Kelso at his office and told him—

Mr. Miller: What morning was that?

A. Thursday morning, the 19th, if I am correct as to the date. I went to his office and I told him I was of the opinion that the property ought not to be turned over by the New Albany Trust Company and that if it was I thought I would remove the Trust Company and I asked him if he would take the receivership.

Q. How did you arrive at that opinion?

A. From the statement that was made to me in the afternoon of Wednesday.

Q. By whom?

Q. From what Sachs and Watts said as to the law and from the examination I had made in the mean time.

Q. Then you met Kelso on the morning of the 19th at his office?

A. Yes sir.

Q. Did you then proceed to your office?

A. No sir, we went out Pearl Street and we both stopped in the office of the New Albany Trust Company and saw Mr. Sauer and Mr. Connor both there.

Q. Did you remain there any length of time?

A. No sir, only a moment.

Q. You did not know Mr. Connor's purpose in being there?

A. No sir. I only bid him the time of day.

Q. Did you and Mr. Kelso go to your office?

A. No sir, I went to my office and Mr. Kelso had an errand out the street and came in later.

Q. When you got to your office had Mr. Sachs and Mr. Watts reached there?

A. No sir, not for some time afterwards.

Q. They afterwards came in?

A. Yes sir.

Q. What time was it that these gentlemen came in that morning?

A. I said I thought it was about nine-thirty in the morning.

Q. Did Mr. Watts and Mr. Sachs come in together?

A. That is my recollection.

Q. What was said that morning in regard to the subsequent proceedings had in connection with this receivership?

A. I think I have stated that unless you can direct my attention to something else.

Q. How long did you remain there at your office that morning?

A. Until nearly noon I think.

By the Court:

Q. Did I understand you to say that at morning, on Thursday morning, Mr. Watts and Mr. Sachs agreed to bear the expenses of Mr. Kelso in his being appointed receiver and in his attempt to get back the property from the receiver of this court?

A. I do not know whether anything was said about the attempt to get back, but aside from that, the statement is correct.

Q. That is, they agreed to bear the expenses to back him, to pay the expenses of the receivership if he accepted it?

A. Yes sir.

Q. Did Mr. Watts and Mr. Sachs both make that promise?

A. That is my recollection.

Q. Did you meet these gentlemen that afternoon?

A. I think I did. I know I met Mr. Sachs, but I would not be positive as to Mr. Watts.

Q. At what hour?

A. Sometime about two o'clock.

Q. Where was that meeting?

A. At my office.

Q. Tell the court what took place there?

A. I think the conversation at that time was between Mr. Sachs and Mr. Kelso as to making the order removing the Trust Company and appointing him.

Q. What was done in that respect?

A. That order was made.

Q. (By the Court) What was said between Mr. Sachs and Mr. Watts and Mr. Kelso?

A. I cannot say all that was said; I can only state the substance.

Q. Give the substance of it?

A. They talked about the removal of the New Albany Trust Co., and Mr. Kelso's appointment, and the order which should be made, citing the Trust Co. to appear and show cause why they should not be punished for contempt of court in turning over the property?

By Mr. Hester:

Q. Can you state who suggested that the Trust Co. should be cited, or was there any such suggestion made?

A. Yes sir, I think so.

Q. Who made that?

A. Mr. Sachs.

Q. That the Trust Company should be cited for contempt?

A. Yes sir.

Q. Was there anything said about Mr. Watts being cited for contempt?

A. Not then, I think there was later.

Q. When was that?

A. Sometime later in the evening.

Q. Where did that take place?

A. My recollection is that was at Mr. Kelso's office.

Q. Who was present at that time?

A. I think Mr. Kelso and Mr. Sachs and myself.

Q. Was Mr. Watts there?

A. I would not be positive as to that.

Q. Who suggested that Mr. Watts be proceeded against for contempt?

A. Mr. Sachs.

Q. Was a citation issued afterwards?

A. Yes sir.

Q. As a result of that suggestion?

A. Not wholly.

The Court: What was not wholly?

Mr. Hester: That it was not issued as a result of that suggestion wholly.

A. I was considering the matter if the Trust Co. could be cited, I was rather of the opinion that Watts also should be cited.

Q. You say you do not remember whether Mr. Watts was present then or not?

A. I would not state positively.

Q. Did you have another meeting on Friday with these gentlemen?

A. Yes sir, I think so.

Q. Was that in the morning?

A. That is my recollection.

Q. Where was that held?

A. In my office.

Q. Who were present?

A. Mr. Kelso was there, Mr. Sachs was there and Mr. Watts was there a part of the time.

Q. Had Mr. Watts been served with a citation for contempt at that time?

A. I think he had.

Q. What was said by either Mr. Watts or Mr. Sachs as near as you can recollect at that meeting?

A. I do not recall anything now that Mr. Watts said, unless my attentiou were directed to it.

Q. By anyone else, if you can remember?

A. There was some talk between Mr. Kelso and Mr. Watts as to the proceedings that should be had for the purpose of recovering this property.

Q. What did Mr. Kelso say about that?

Mr. Fairleigh: You don't say Mr. Watts was there.

A. I think Mr. Watts was there sometime in the morning.

Q. But at this time was anything said by Mr. Watts?

A. I do not recall that Mr. Watts said anything.

By Mr. Miller:

Q. What day was this?

A. Friday.

By the Court:

Q. What did Mr. Sachs say with reference to the receiver getting possession of the property?

A. I can only state in substance what he said. I can not use the words that he said.

Q. State the substance?

A. That after the Trust Co. was removed, they were to make a demand for the property on Mr. Connor and if it was not turned over then send the sheriff with a writ and take the property.

Q. Who suggested that?

A. I would not say who suggested that, whether Mr. Kelso made the statement or whether Mr. Sachs made the statement.

Q. Was Mr. Sachs present when it was made?

A. Yes, sir.

Q. By Mr. Hester: Was he representing Mr. Kelso at that time?

A. Yes, sir; acting as Mr. Kelso's attorney.

Q. Mr. Kelso was acting as receiver?

A. Yes, sir.

Q. Had he qualified as receiver then?

A. I think not. I think the papers were being prepared at that time or were in the course of preparation.

Q. Do you know what time that day he did qualify?

A. Sometime in the afternoon.

Q. Was he required to give bond?

A. Yes, sir.

Q. You think the bond was filed sometime in the afternoon?

A. Yes, sir.

Q. You approved the bond?

A. Yes, sir.

Q. Who brought the bond to you for approval?

A. Yes sir, Mr. Kelso.

Q. Was Mr. Sachs there then?

A. Yes sir.

Q. He was present?

A. Yes sir

Q. When was that?

A. I am not positive whether that was on Thursday afternoon or Friday afternoon, the record there will show.

Q. Did these gentlemen remain at your office on Friday afternoon?

A. A very short time and then they went to Mr. Kelso's office. Mr. Sachs and Mr. Kelso went to his office and I saw nothing more of them until late in the evening.

Q. Where was Mr. Watts during this time?

A. He was about the city.

Q. New Albany?

A. He came into my office in the afternoon between two and three o'clock Mr. Watts did.

Q. What was his business there, what did he do or say?

A. He wanted to get an extension of time for filing his response. He was there when Col. Jewett came in with Mr. Mosier.

Q. Mr. Jewett came with Mr. Mosier the president of the Trust Co?

A. Yes sir.

Q. He came in for that purpose?

A. He came in for the purpose of asking that I grant him further time to prepare a response.

Q. That was the response of the Trust Co. to the citation for contempt?

A. Yes sir.

Q. Mr. Watts was there and asked for further time?

A. Mr. Watts was there when Mr. Jewett came in.

Q. Were they granted further time?

A. Yes sir.

Q. Until when?

A. Until the following Wednesday.

Q. Did you see anything more of Mr. Watts and Sachs that day?

A. I do not know whether I saw anything more of Mr. Watts or not. I saw Mr. Sachs at Mr. Kelso's office late that evening.

By the Court:

Q. What day was that?

A. Friday evening, I should judge about half-past five. They said they would have the papers ready and I was anxious to go home and went to Mr. Kelso's office to see whether they had the papers prepared.

Q. Were the papers being prepared then?

A. Yes sir.

Q. What papers?

A. The papers in regard to retaking the property.

Q. Retaking possession from Mr. Connor?

A. Yes sir.

Q. Do you know what papers were being prepared?

A. No sir, not at that time.

Q. Who were preparing those papers?

A. I could not say.

Q. Who were there?

A. Mr. Kelso and Mr. Sachs.

Q. By Mr. Hester: Did they have a stenographer?

A. Mr. Kelso had, but I did not notice whether she was working on the papers or not.

Q. Had they been prepared or finished when you got there?

A. No sir.

Q. Do you wait for sometime for them?

A. I think I waited some few minutes, fifteen or twenty minutes.

Q. You were there I suppose for the purpose of signing the order?

A. Yes sir.

Q. While you were there state whether you signed the order?

A. Not there.

Q. Where was the order signed?

A. At the court house.

Q. Did Mr. Sachs, Mr. Kelso and yourself then go back to the court house?

A. I would not be positive about that whether they went back with me or not. I do not think they got all the papers done. I know I came back after supper for the purpose of signing some of the papers they had not prepared.

Q. What time was that?

A. I think about seven o'clock.

Q. Who was there at your office at that time?

A. That was not in my office. It was in the clerk's office.

Q. Who was in the clerk's office?

A. The deputy clerk was there and later I think Mr. Kelso came in.

Q. Was Mr. Sachs there that evening?

A. No sir, I think not. I do not remember of seeing Mr. Sachs there.

By the court:

Q. After supper?

A. No sir.

By Mr. Hester:

Q. Did you remain there any longer than long enough to sign the order.

A. I was only there a short time.

Q. Did you remain until after the property was taken?

A. Yes I think I did.

Q. To whom was the writ of resitution or whatever it was delivered?

A. To the sheriff, I think.

Q. Mr. Morris?

A. Yes sir.

Q. Do you know whether he came back to the court-house in regard to that matter that evening?

A. I am inclined to think he did.

Q. For what purpose if you know?

A. He came back to report that Mr. Connor would not turn the property over, I suppose, I did not know what his purpose was.

Q. What did he say or do?

A. I did not hear him say anything. I know that Mr. Kelso reported the fact to me that Mr. Connor refused to turn the property over, and then I made the order directing the sheriff to take it.

Q. Did you talk with Mr. Morris the sheriff?

A. I don't think I did.

Q. You made the order directing the sheriff to take it?

A. Yes sir.

Q. Did he come back after that?

A. Yes sir.

Q. How long afterwards?

A. Probably thirty minutes.

Q. For what purpose did he come back or what did he say when he did come back?

A. I think he stated that he had taken possession of the property but that there was some one in the plant yet.

Q. Did he tell you who it was, or what kind of an officer?

A. No sir, I don't think he stated that, except as I gathered from what he said that it was a watchman.

Q. Of whom?

A. Of Mr. Connor.

Q. He said that Mr. Connor's watchman was in charge?

A. That is the way I understood it.

Q. In possession of the plant. Did he get any further instructions?

A. Yes sir.

Q. What was said in regard to that?

A. Either myself or Mr. Kelso told him he would have to have everyone out of there that was in there before the court could turn it over to Mr. Kelso?

Q. What directions did he get in regard to obtaining complete possession of it. I think that was all that was said.

A. Yes sir.

Q. He left then?

A. Yes sir.

Q. Did he return again?

A. I don't remember.

Q. Do you know whether he did deliver complete possession of the property to Mr. Kelso?

A. I don't know about that.

Q. Do you know anything about the insolvency of M. Zier and Company previous to the complaint for a receivership being filed by Ryerson & Son?

A. No sir I did not.

Q. Did you know of any payments of money that had been made by—

Mr. Miller: I cannot see how his knowledge is competent.

The Court: I am not so sure that it is, Mr. Miller. Go on something else.

Q. You have related about all the steps that occur up to the time that this property was delivered by the sheriff to Mr. Kelso under the writ issued from your court.

A. As far as I recall it now.

Q. Do you remember when the citations were served in this case on the parties there in Floyd County, do you remember what date that was?

A. I think the citation was on the New Albany Trust Co —I know Mr. Watts was served on the 30th.

Q. I made the citations issued by this Court.

A. I think that was on Saturday evening.

Q. Did you have any further conference with these gentlemen after that?

The Court: What gentlemen?

Mr. Hester: Mr. Watts, Mr. Sachs and Mr. Kelso.

A. Yes, on Sunday morning.

Q. Where was that conference had?

A. At Mr. Kelso's office.

Q. By what arrangement, if you know?

A. Who notified—

The Court: No matter about that. Come to the meeting.

Q. I would like to know how they came to be there?

A. I think they were notified by telephone.

Q. What was said at that meeting?

A. The subject of that meeting was with reference to preparing a response for all the parties cited by this Court.

By the Court:

Q. Who was present?

A. Mr. Watts was there, and Mr. Sachs was there and Mr. Kelso was there and I was there.

Q. What did Mr. Sachs and Mr. Watts say about responses and appearing here?

A. I think, my recollection of it is, they said they would prepare the responses and that they would all appear here without reference to the manner of service, as to Mr. Sachs and Mr. Watts. They had not been served at that time.

Mr. Miller:

Q. This is on Sunday?

A. Yes sir.

By Mr. Hester:

Q. Was anything said about who should prepare the responses, or did he say about that?

A. I can not say as to that.

Q. What time did you separate that Sunday morning?

A. We were there an hour or an hour and a quarter or something like that.

Q. Did you arrange for another meeting next day?

A. Yes sir, Mr. Kelso and Mr. Sachs and Mr. Watts arranged to go to Mr. Sachs' office next morning to draw the responses.

By the Court:

Q. Where?

A. At Mr. Sachs' office in Louisville.

By Mr. Hester:

Q. Were you present at that meeting?

A. I went to Mr. Sachs' office in the afternoon, Monday afternoon.

Q. Who was there then?

A. Mr. Sachs and Mr. Kelso. Neither of them was at Mr. Sachs' office when I went in. They were at lunch as I was informed.

Q. They afterwards came in and you four were at that meeting?

A. Mr. Watts came in response to a telephone message from Mr. Sachs or one of Mr. Sachs' brothers.

Q. What was done on that Monday afternoon about preparing the responses.

A. Nothing except a discussion of the law.

Q. Were the responses prepared?

A. They were not.

Q. Was anything said by Mr. Kelso in regard to these gentlemen furnishing money to carry on this Receivership that he was involved in?

A. Yes, sir.

Q. What was that?

A. Mr. Kelso wanted to know late in the afternoon about four o'clock after stating the agreement that had been made originally, who was going to bear the expenses of it and Mr. Sachs said he did not think any lawyer ought to bear expenses of that kind.

Q. By the Court. Did I understand you to testify awhile ago that Mr. Sachs originally agreed to bear those expenses?

A. Yes, sir.

Q. By Mr. Hester. Was anything said by any of the other parties, either Watts or Kelso, further about the expenses of the Receivership?

A. Not that I recall now.

Q. Do you recall whether or not they reached a definite determination or anything was said about their determination not to pay anything or furnish any money or funds?

A. I think I have stated all that I recollect that occurred on that subject. Mr. Kelso then went to the telegraph office to telegraph to some attorney to appear for him.

Q. How much longer did you remain in Mr. Sachs' office that afternoon?

A. Probably a half an hour.

Q. Then you went back to New Albany?

A. Yes, sir—Mr. Kelso and I went back.

Q. You were not present in Louisville at any other meeting after that?

A. No sir.

Q. By the Court: What was said at that time about them coming up here with Mr. Kelso and the other persons cited on Monday afternoon—what did Mr. Watts and Mr. Sachs say about that if anything?

A. I recollect that Mr. Sachs said he would not come here, that he would sooner go to Jamaica or some place—

By the Court: Speak that out so that I can hear it.

A. He said that he would not come here, that he would sooner go to Jamaica or California rather than testify against his friend Watts, as I remember.

Q. By Mr. Hester: Was that stated before Mr. Kelso and Mr. Watts?

A. Yes sir.

Q. What did Mr. Watts say in answer to that?

A. I don't know that Mr. Watts said anything in answer to it.

Q. Is that the substance of that conversation that afternoon?

A. As near as I can recall.

Q. By Mr. Miller: Was that Monday afternoon?

A. Yes sir.

Q. By Mr. Hester: What, if anything, did Mr. Watts say about coming to Indianapolis?

A. Mr. Watts talked about whether he ought to come. He said he felt like he ought to come and yet he said he did not want to do anything in view of what had occurred on the 16th and 17th; that he did not want to do anything that would jeopardize the officers cited to appear and Mr. Kelso.

Q. That was in connection with his coming up here that he said that?

A. Yes sir.

Q. Was Mr. Watts talking about coming to Indianapolis then as one of the attorneys for Mr. Kelso or these other officers or individually in answer to the citation directed against him?

A. No sir; he was talking with reference to coming in regard to the citation that had been issued against him and Mr. Sachs.

By the Court:

Q. You did not appoint Mr. Kelso as receiver until after the Trust Company had turned the property over to Mr. Connor, the receiver of this Court?

A. No sir.

Q. And you appointed him receiver at that time for the purpose of retaking the property from the receiver of this Court?

A. That was my understanding of it.

Q. You did that upon the advice and suggestion of whom?

A. On the advice of Mr. Sachs and on the information I had in regard to the law.

Q. What did Mr. Watts have to do with that proposition?

A. I would not state that he had anything to do except that agreement in regard to taking care of the expenses.

CROSS-EXAMINED BY MR. FAIRLEIGH.

Q. Will you be good enough to tell the court when you first saw Mr. Sachs and Mr. Watts after their return from Indianapolis after their appearance here before the Judge of this court on the 16th and 17th—I mean after the appearance of Mr. Watts and Mr. Jewett.

A. Two o'clock of the afternoon of the 18th.

Q. At that meeting Mr. Watts had prepared a brown paper statement of what had occurred here before Judge Anderson?

A. Yes sir.

Q. Mr. Jewett appeared also at the same time?

A. Yes sir.

Q. He had no statement prepared?

A. Not at that time.

Q. It was understood that next morning the statement of Mr. Watts as attorney for the New Albany Trust Company as receiver, and the statement of the New Albany Trust Company Receiver would both be filed before you? was that the idea?

A. It was understood and stated by Mr. Jewett that afternoon that he thought he would be able to get the paper of the Trust Company ready that afternoon as I recollect it.

Q. They were not filed that afternoon?

A. I could not state as to the actual filing. I know the Trust Company did not get theirs ready until the next morning.

Q. They were both filed formally before you the next morning.

A. I would not state positively whether Mr. Watts, was filed Wednesday afternoon or Thursday morning?

Q. The record discloses the fact that it was filed Thursday morning?

A. Whatever it is.

Q. What time did you see Mr. Watts and Mr. Sachs on Thursday morning?

A. It was about 9.30, I guess along there, I don't remember the exact time.

Q. Had you seen Mr. Kelso before you saw them that morning?

A. Yes, sir.

Q. Had you telephoned Mr. Kelso the evening before that you wanted to see him next morning?

A. Yes, sir.

Q. Did Mr. Sachs and Mr. Watts know that you were going to telephone to Mr. Kelso that evening before they left?

A. No, sir; they did not.

Q. You telephoned to Mr. Kelso on your own motion?

A. Yes, sir.

Q. Without any consultation with them or either of them about that fact?

A. Yes, sir.

Q. What did you want to see Kelso for?

A. I wanted to talk with him with reference to whether the Trust Company ought to be permitted to resign or the property ought to be turned over. He was a stockholder in the New Albany Trust Company at that time.

Q. Accordingly you saw him the next morning, which was Thursday morning, at his office about eight o'clock?

A. Yes, sir.

Q. You did talk with him about that subject?

A. Yes, sir.

Q. What did he tell you?

A. He said he would take the Receivership.

Q. It was arranged between you and Mr. Kelso alone?

A. So far as I know.

Q. That determination was made by you at that time?

A. Yes, sir.

Q. That was your conclusion of the whole matter?

A. As I understood it.

Q. When Watts and Sachs arrived Thursday morning that conclusion had been reached by you independently of them?

A. Yes, sir.

Q. They had no connection with the formation of that judgment, had they?

A. Not that I know of.

Q. Had they suggested or advised in any way the appointment of Mr. Kelso?

A. No sir, not to me.

Q. By the Court. What do you mean by that that they had not advised Kelso as distinguished from any other person or do you mean to swear that they did not advise the appointment of any receiver at all?

A. I mean that they did not tell me that they wanted Kelso appointed Receiver.

Q. By Mr. Fairleigh. Or anybody else?

A. So far as I know.

Q. They did not suggest the name of anybody?

A. No sir.

Q. Let us get at that so as to have it clear. Up to that time had Mr. Watts or Mr. Sachs in any way advised the appointment of another Receiver?

A. Up to what time do you refer?

Q. Up to the time you went to Kelso's office on the morning of Thursday?

A. No sir.

Q. That was an independent judgment reached by you?

A. Yes sir.

Q. How long did you stay with Mr. Kelso that morning?

A. Only a few minutes. I don't know just how long.

Q. Did he come over to your office that morning afterwards?

A. Yes sir.

Q. Did he arrive there before or after Mr. Sachs and Mr. Watts arrived there?

A. My recollection is he came before.

Q. Was he with you when Mr. Sachs and Mr. Watts came into your office?

A. That is my recollection.

Q. Had you and Mr. Kelso been discussing this matter there in your office before the arrival of Mr. Sachs and Mr. Watts?

A. I would not state whether we had any discussion of it there or not.

Q. The thing had been concluded, you determined what to do?

A. So understood it.

Q. What action was taken by you on those petitions up to that time?

A. I think I stated that I did not think the property ought to be turned over and that they might put in the response what they desired to but that I would neither expunge the record that was made on the 14th nor would I permit the Trust Company to resign.

Q. What was the purpose of expunging the record or certain parts of it—was any statement made in open court about that?

A. Yes, sir—Mr. Watts stated Wednesday afternoon that he had promished to advise the turning over of the property. I am not entirely clear but I think he said he had promised to have the record made on the 14th of February expunged.

By the Court. I want to understand that. What was said about expunging the record?

A. I say am not entirely clear on that.

Q. I want you to be clear. I know what the fact is and I want to know what he said about it?

A. I know this: I want the entire record made—the order made on the 14th of February expunged from the record.

Q. Did he tell you that this Court had asked that to be done?

A. As I say I would not state positively about that.

Q. By Mr. Fairleigh. How long did Mr. Sachs and Mr. Watts stay in your office after that matter had been determined?

A. What matter do you refer to?

Q. After you expressed disapprobation of what they had done?

A. As I stated in the direct examination until I think something like 11 o'clock or along there. I am not sure.

Q. Was there anything said there about the appointment of Mr. Kelso as Receiver after that time?

A. I could not state.

Q. You do not remember?

A. No, sir.

Q. They left your office about 11 o'clock as you remember it?

A. Sometime along there, I think.

Q. Did they afterwards return to your office during that day as you remember?

A. Mr. Sachs did but I don't know for sure whether Mr. Watts did or not.

Q. This is Thursday: Did Mr. Sachs return Thursday to your office?

A. Yes—that is my recollection.

Q. Do you know for what purpose?

A. I could not state the purpose.

Q. Have you any recollection at all of what he said or did after he returned to your office?

A. I think there was some talk between him and Mr. Kelso as to the situation—as to the citation that was to be issued against the Trust Company.

Q. Was Mr. Kelso there?

A. I think he was.

Q. Do you know how long they were at your office that afternoon?

A. I could not state that.

Q. They returned to New Albany on Friday morning and came to your office?

A. Yes, sir.

Q. What was the purpose of their coming there that morning, do you remember?

A. No, sir—I could not state the purpose.

Q. Do you remember of telephoning to Mr. Sachs on Thursday evening and asking him and Mr. Watts to come over to your court or office on Friday morning?

A. No, sir; I have no recollection whatever of it.

Q. You have no recollection whether you did or did not?

A. I don't think I did.

Q. They did come to your office on Friday morning as I understand.

A. Yes, sir.

Q. About what time, do you remember?

A. About 10 o'clock.

Q. Was Mr. Kelso there when they came?

A. I don't know whether he was or not. If he was not there, then he came in shortly afterwards. I know that Mr. Kelso was there at some time during a part of the morning.

Q. When was the order entered appointing Mr. Kelso Receiver—was that on Friday?

A. I don't know whether it was Thursday afternoon or Friday. I could not state but I am rather of the impression that it was on Thursday.

Q. What is the date of the appointment of Mr. Kelso?

By the Court: Friday the 20th.

A. Yes; I think that is right.

By Mr. LaFollette: Yes it was on the 20th that his bond was filed.

A. That is the date of the appointment.

Q. When did you tell Mr. Watts and Sachs, if you told them at all that you had determined to appoint Mr. Kelso Receiver?

A. I don't know that I have stated that to them at all. I may have done so.

Q. Who drew the order appointing Mr. Kelso Receiver?

A. I could not state that.

Q. Was it drawn in your presence?

A. I do not know that.

Q. What proceedings were in contemplation by anybody at the time Mr. Kelso was appointed? What proceedings were in contemplation to be taken by the Receiver?

A. He was to take the property.

Q. How?

A. How?

Q. Yes. Was the method of taking it discussed by anybody?

A. I think the method was discussed between Mr. Kelso and Mr. Sachs.

Q. Was there anything said about intervening in this Court by Mr. Kelso the Receiver?

A. Not that I recall now.

Q. Was any discussion had about appearing in this court and filing an intervening petition in the bankruptcy case and submitting to this court the question of where the possession of the property rightfully belonged?

A. There may have been. I won't state positively.

By the Court: Of course, a great many things may have been?

A. I say that I cannot state as to that.

Q. When was it determined to issue a writ?

A. On Friday.

Q. How late?

A. I don't know whether that was in the morning or the afternoon.

Q. Was it not late in the afternoon, as you remember it?

A. It was not late in the afternoon. I think it was done in my presence early in the afternoon.

Q. Kelso by order the of appointment was directed to demand of Mr. Connor, the Receiver, possession of this property of M. Zier & Co. and of the New Albany Trust Co. also?

A. Yes, sir.

Q. And upon default on the part of either, Kelso was directed to report that fact to the Court?

A. Yes, sir.

Q. The order of appointment went no farther than that?

A. That is my recollection.

Q. The order for the issuance of a writ was made thereafter therefore?

A. Yes, sir.

Q. Now who was present when that order was determined upon?

A. I could not state that.

Q. Is it not true that neither Watts nor Sachs was present?

A. My recollection is that Sachs was there with Mr. Kelso and was advising the court. That is all I can state as to that.

Q. At that time?

A. Yes, sir.

By the Court: With reference to that matter?

A. Yes, sir.

Q. Watts was not present as you remember?

A. I would not state that he was there. He may have been there. He was in New Albany.

Q. Are you certain that Mr. Sachs was there?

A. When that matter was being discussed?

Q. After Kelso reported back that he could not obtain the possession of the property?

A. I do not know whether he was when he reported back that fact but the course that was pursued, I know that Mr. Sachs knew and advised with reference to that.

Q. You are not certain that Sachs was there at the time Kelso reported back to you that the demand had been refused?

A. No sir—I could not state that.

Q. Is it not your best impression that ye was not there?

A. I could not state; I do not know.

Q. That was late in the afternoon, did you say?

A. I think it was.

Q. Could you now say how late it was, whether it was five or six o'clock?

A. No, I could not. It was somewhere along there, I think.

Q. Nevertheless upon that report made by Mr. Kelso that he was not able to obtain the property from the New Albany Trust Co. or Connor you did direct the entry of any order directing the writ to be issued and given to the sheriff?

A. Yes, sir.

Q. Was that put in the hands of the Sheriff?

A. Yes sir.

Q. By whom?

A. I do not know who handed it to him. The writ was prepared. Whether Mr. Kelso delivered it in person or whether the Clerk carried it to him, I do not know.

Q. By the Court: Did I understand you to say that you entered the order directing the sheriff to do that?

A. Yes.

Q. Of record?

A. Yes sir.

Q. Was the court in session?

A. I signed the order in vacation as we always do?

Q. It was not a court order?

A. It was in vacation.

Q. You were not stiting as the Floyd Circuit Court?

A. As the Judge of the Floyd Circuit Court.

Q. It was during vacation and you were not sitting—

A. The court was not in session, no sir.

Q. And under that writ the property was taken as you have heretofore related and turned over to Mr. Kelso?

A. Yes sir.

Q. By Mr. Fairleigh: Did Mr. Kelso report back to you in writing?

A. Yes sir.

Q. That he had been unable to get possession of the property?

A. Yes sir.

Q. Do you know who prepared that paper or writ?

A. I don't know who prepared it.

Q. Was it in typewriting, do you remember?

A. That is my recollection.

Q. Signed by Mr. Kelso?

A. Yes sir.

Q. You have spoken about some agreement to pay costs and expenses. What day was that conversation in which that occured?

A. On Thursday morning.

Q. What was the scope and real purpose of that? I have no doubt that the court would like to know that?

A. That was the condition on which Mr. Kelso stated to them that he would take the Receivership.

Q. I understood you to say that he had agreed to take it you had agreed upon that before they came over?

A. That is true.

Q. That was an independent determination of yours before they arrived on Thursday morning?

A. Yes, sir.

Q. How did this discussion about expenses come up—what induced it?

A. I cannot state except as I recall it. Kelso asked Watts and Sachs if he took the Receivership if they would protect him against any costs.

Q. What was he to do that would incur costs: that is what I want to get at. What costs were in the minds of the parties at the time?

A. I do not know what he said as to that.

Q. Do you remember of anything being said about filing pleadings in this court and court costs and all that sort of thing?

A. No sir—I do not.

Q. You would not undertake to say what the scope of that agreement to pay costs was?

A. No, sir—I do not recall now.

Q. It was a casual conversation between the parties?

A. No, sir; it was a question of whether Kelso would take the Receivership.

Q. The conversation was after he had agreed to take it and after you had determined to appoint him?

A. Yes, sir. In that connection, I think it is proper to say that my recollection now is that Kelso stated to me—

By Mr. Fairleigh: In the presence of Mr. Watts and Mr. Sachs?

By the Court: Finish you statement anyhow?

A. That that was the condition on which he would take it.

Q. By Mr. Kealing: At his office when you first talked about it?

A. Yes, sir.

Q. By Mr. Hester: What would be the condition?

A. That he was to be at no expense.

By Mr. Fairleigh: Kelso said that he would not undertake it except that he would be guaranteed against any cost personal to himself?

A. Yes, sir.

Q. That was on the information that all of the property had passed out of the hands of the Receiver?

A. Yes, sir.

Q. And he had no funds to pay costs?

A. Yes, sir.

Q. Was there any statement about what amount of costs there would be?

A. I do not recall it; there may have been.

Q. Who was the attorney for that Inland Steel Company in that Ryerson litigation down in the Floyd Circuit Court?

A. Hoerter and Hester.

Q. Who filed the petition in bankruptcy?

A. Mr. Hester filed the petition. I do not know whose name appears on it as attorney.

Q. The petition in involuntary bankruptcy on behalf of the Inland Steel Company Mr. Hester filed?

A. Yes, sir; he filed it.

Mr. Fairleigh: That is a record fact?

The Court: Yes; and I do not think it is material.

Q. Who filed the intervening petition of Connor Receiver of this court in the suit down in the Floyd Circuit Court as the attorney for Mr. Connor?

A. Mr. George Hester filed the petition.

Cross-examined by Mr. Smith for defendant Sachs.

Q. At the time you say these parties were over there on Wednesday afternoon how long did they remain—Sachs and Watts?

A. Probably a little more than an hour. Something like that.

Q. Was Mr. Kelso in your office with them during the entire time they were there?

A. He was not there at all Wednesday afternoon.

Q. Kelso was not at your office at all?

A. No, sir.

Q. Did you talk with Watts and Sachs with reference to this trouble they had had up here?

A. I think that was stated when Watts and Jewett both stated what promise they had made to turn the property over.

Q. Jewett did not undertake to make any report on Thursday?

A. He said that he would, that he could get it ready by five o'clock.

Q. They did not remain there until five o'clock to see whether Jewett would bring the report?

A. I think Mr. Jewett informed me that he could not get it ready later on. They did not wait.

Q. You took no action on that day did you?

A. None except to say to Mr. Jewett not to turn the property over until the next morning until I could think of it.

Q. You took no action in regard to any matter relating to Watts and Sachs upon that Wednesday?

A. No, sir.

Q. Did you not tell Watts and Sachs or both of them at the time they left there on Wednesday afternoon that you wanted a meeting of all of the attorneys on Thursday morning and for them to go by and tell Kelso to have them there?

A. No, sir.

Q. You say you did not do that?

A. No, sir.

Q. You are quite sure about that?

A. Yes, sir; I am quite sure.

Q. You are sure you did not tell them to go by and tell Kelso to have the other attorneys there Wednesday morning?

A. I certainly did not?

Q. Do you know the occasion of their returning Thursday morning?

A. No, sir—I would not state as to that positively.

Q. Don't you know that you instructed them on that Wednesday afternoon to return Thursday morning?

A. I do not know whether I instructed them to return. I know that I stated that I would determine the matter in the morning at nine o'clock as to what action I would take or what conclusion I would come to as to whether the Trust Company should turn over the property.

Q. Did you not tell them you would make an engagement for Kelso to come over and see those two next morning?

A. No.

Q. You did make an engagement with Mr. Kelso to come to your office at eight o'clock?

A. No sir; I made an engagement to meet him at his office.

Q. That was an hour before nine o'clock when you said you would report what action you would take?

A. Yes, sir.

Q. You didn't see these parties any more after they left your office at an hour after three until they returned next morning about nine-thirty?

A. I think not.

Q. That was on Thursday morning that they returned?

A. Yes, sir.

Q. Mr. Kelso was there at the time they came in?

A. That is my recollection.

Q. Did I understand you at that time to say that there had been nothing said between you and Mr. Sachs and Mr. Watts in regard to the removal of the trust company and the appointment of another receiver?

A. That is my recollection.

Q. You had agreed and Kelso had accepted the appointment, as you say now, conditionally that the costs were arranged?

A. Yes sir?

Q. When was the conversation in regard to the arrangement about costs first mentioned with reference to the time of their coming next morning—Thursday morning?

A. After I had stated to the trust company and after I had stated to Mr. Watts that I would not reply to the requests that they asked of me.

Q. That was the next thing in order, the question of Mr. Kelso being secured as against any costs that he might incur?

A. Yes sir.

Q. Then Mr. Kelso up that time hadn't said to Mr. Sachs that I will employ you as attorney had he?

A. I think not.

Q. What time of the day did that occur with reference to the time that they got there in the morning?

A. It was a very short time, for there was a discussion as to Mr. Kelso's taking the receivership and Mr. Sachs to act as Kr. Kelso's attorney.

Q. Who was present, judge, at the time Mr. Sachs made that agreement with Mr. Kelso?

A. Mr. Watts, Mr. Sachs, Mr. Kelso and myself.

Q. Just you four?

A. That is the way I recall it now.

Q. And that was in your office at the court house?

A. Yes sir.

Q. That was a short while after they came over there and after you had stated to them that Mr. Kelso had agreed to accept the appointment?

A. I don't know whether I stated it to them or not, or whether that was understood; I don't know about that.

Q. You had no conversation with them by which they could arrive at that understanding, that is the understanding by which you were to—

A. (Interrupting) I don't know what their understanding with Mr. Kelso was, or whether they had any.

Q. Had they had any conference with Mr. Kelso since they left your office that afternoon at all?

A. I don't recall now whether they did or didn't.

Q. What time did they leave on that Thursday, Mr. Sachs and Mr. Watts?

A. As I stated, I think Mr. Sachs and Mr. Kelso were there, it was something like a little after 11, along there; I don't know just when Mr. Watts left, I couldn't state; Mr. Sachs came back in the afternoon, and whether Mr. Watts came back I couldn't state; they may have done so.

Q. You were very angry, judge, at the time you heard of the action of the court here were you not?

A. No sir; I wouldn't state that I was angry.

Q. Well you were very much grieved over the turn that matters had taken?

A. I felt that the trust company, after talking with Mr Sachs about the matter, and after the discussion on Wednesday afternoon, and after the examination of the authorities that I had, I concluded that the trust company hadn't treated me right in the matter, and that Mr. Watts hadn't.

Q. Well you knew Mr. Sachs was Mr. Watts's friend did you not?

A. No I knew nothing about the relations between Mr. Sachs and Mr. Watts previous to that time.

Q. How long had you known Mr. Sachs previous to that time?

A. I met Mr. Sachs for the first time on Thursday morning, the 19th, I think it was; no on Wednesday afternoon.

Q. Wednesday afternoon?

A. Yes sir.

Q. Didn't they leave there Wednesday afternoon, and come back there Friday morning?

A. No sir.

Q. Thursday morning, I mean?

A. Yes sir that is correct.

Q. And was Mr. Jewett's report filed on Thursday at all?

A. You mean the request to be permitted to resign the trust?

Q. No sir I am talking now of his report as to the assets that came to his hands and the disposition of it

A. No that wasn't filed until later, I think it was Thursday evening or Friday.

Q. Wasn't that the report that you were going to require of them, as you say, on Wednesday afternoon, that he should make a statement of the matter and make a report before you took any action in the case? Wasn't that the report that you were looking to be filed?

A. No I expected a report asking permission to resign the trust; make a report and resign the trust.

Q. Well on Thursday didn't you tell him that you would withhold any action in the matter until after he had filed his report, and that you would decline to remove him or appoint anyone else until a report was made of the assets and liabilities still in his hands?

A. I don't think I made that statement because after I investigated the matter from what Mr. Watts and Mr. Sachs had stated I concluded to remove them.

Q. Didn't Mr. Jewett bring you a paper in accordance with your request, didn't he bring you a paper with figures on it, and didn't you say it was so indefinite that you couldn't approve it, and didn't he tell you the reason why it was so was that one of the clerks undertook to furnish it and didn't know very much about it?

A. He made some statement of that kind when he filed a little paper showing the amount received and expended.

Q. That was on Thursday, was it not?

A. I think that was Friday evening late.

Q. He hadn't turned over the property up to that time had he?

A. Yes sir.

Q. What time was the property turned over?

A. I couldn't state; I was informed it was turned over Thursday morning about the time—

Q. (Interrupting) Thursday morning?

A. (Continuing) They were in the office.

Q. Wasn't Jewett in there Thursday, and wasn't he asked the question in regard to whether he had turned the property over?

A. Yes sir.

Q. When did he answer?

A. I don't think he answered at all that morning, as I recall it.

Q. Colonel Jewett, I mean.

A. Yes sir, he may have done so; I wouldnt' say positively about that.

Q. I believe you said awhile ago in your examination in chief that he didn't answer the question at all, but said he was going to do it.

A. As I recollected he said he didn't want to be interrupted.

Q. You have given your evidence before as a witness on the trial of the case against Charles D. Kelso and others in this court?

A. Yes sir.

Q. I will ask you in response to a question asked you upon that examination as a witness if you didn't say: "Yes; Yes sir, Mr. Jewett—Colonel Jewett, Colonel Jewett said on behalf of the trust company that the trust company had decided to turn the property over to Mr. Connor, receiver, and that he was asked there, or some question was asked him as to whether the property had been turned over, and he said he didn't know but it probably had as Mr. Connor was there at the trust company office demanding the keys."

A. I may have made that statement, and I would not say now that is I wouldn't say positively whether he did state it or not. I know he said he didn't want to be interrupted, and when Colonel Jewett went out of the office Mr. Sachs said the property had been turned over.

Q. On Friday, judge Mr. Sachs and Mr. Watts came over there about nine-thirty in the morning was it?

A. I think it was about ten o'clock.

Q. They remained there that day?

A. Mr. Sachs was in my office with Mr. Kelso—I don't know how long Mr. Watts remained.

Q. Were they not there the forenoon and afternoon too?

A. Mr. Sachs was, and I am not sure but that Mr. Watts came in during the afternoon.

Q. That was the day on which the proce s was issued for reclaiming the property?

A. Yes sir.

Q. Now they were there about ten o'clock, they remained up to the lunch hour; did they go out for lunch?

A. Well they left my office.

Q. Did they leave together?

A. Who do you refer to as they.

Q. Mr. Watts and Mr. Sachs; I am speaking definitely now of those two.

A. I think Mr. Sachs and Mr. Kelso left together but whether Mr. Watts was there and went with them I don't know.

Q. Do you remember whether Mr. Watts went out to lunch?

A. No I don't know.

Q. Did you go to lunch that day?

A. Yes sir.

Q. They were back in the office that afternoon?

A. Mr. Sachs was there, Mr. Kelso was there, and Mr. Watts may have been.

Q. What time did they come back, Judge?

A. They came back about two o'clock.

Q. How long did they remain?

A. I don't think they stayed very long in the afternoon; then Mr. Sachs said Mr. Kelso went to Mr. Kelso's office to prepare the papers.

Q. Judge, was Mr. Joe Sachs there on Friday afternoon?

A. I think he was.

Q. Was he there on this business or representing some other interests?

A. Mr. Joe Sachs came there, said something to me in regard to a contract with a party in Louisville that he and Mr. Hester represented; that an order had been made by the Floyd Circuit Court for the completion of it, and he was wanting something done. The thing stopped and he wanted something done with reference to the completion of that contract.

Q. Mr. Sachs was there in the afternoon, Joe Sachs? He wasn't there in the morning was he?

A. I think it was in the afternoon.

Q. Do you remember what hour he came in the afternoon?

A. No sir I do not.

Q. Wasn't it about two or three o'clock?

A. It may have been; I couldn't say about the time.

Q. In the morning you say when Mr. Kelso and D. A. Sachs left the office they went to Kelso's office; you don't know that they went to that office, do you, judge?

A. In the morning in the afternoon? I know they said that was where they were going.

Q. In the afternoon?

A. Yes sir.

Q. You left the office at the time or before they did, did you not?

A. In the afternoon?

Q. Yes.

A. No I remained at the office, I think.

Q. Sir?

A. I think I remained at the office.

Q. Didn't you transact the business for Mr. Joe Sachs, or at least talk with him in regard to the matter on that afternoon and then did he not invite you together with the entire party of gentlemen to go out for some refreshments?

A. No, I think not.

Q. Are you certain that you did not?

A. I am not certain about it.

The Court: I don't think it is material.

Mr. Smith: I want to locate—or show that these men were not there; I am trying to show that they were not in consultation with one another or with the Judge on that afternoon after three o'clock.

The Court: Well go ahead.

Q. I will ask you, Judge, if you and Mr. Watts and Mr. Joe Sachs didn't go over to the cafe over there on the corner and go in the back room and stay there until some five or six o'clock in the afternoon?

A. No I think we were in there but not that late; only a short time.

Q. You all sat in there and had refreshments two or three or four times, didn't you?

A. Something like that, yes sir.

Q. You then, now, do remember that you and Mr. Joe Sachs and Mr. Watts went out of your private office at about three o'clock and went over into this place?

A. I don't know whether we went together; I know I was there when they were there; that is all I can say about that.

Q. Judge, I would like to refresh you recollection, if possible, about this matter because I think it is important. Don't you remember Joe Sachs extended to you an invitation, and that you went on the invitation?

A. I may have done so; I don't know.

Q. Don't you remember that Mr. Watts went with you on that invitation?

A. I think Mr. Watts was there, but as I said whether we were together or not I don't know.

Q. Now as a matter of fact, Judge, to refresh your recollection in regard to the matter, don't you remember that about that time that that matter was mentioned you had given Mr. Kelso instructions to draw up orders removing the New Albany Trust Company as receiver and of appointing himself as receiver and to get up the order on his bond, and don't you know at that time, he on that occasion declined Mr. Joe Sachs invitation to go out with him because you had told him to go and draw those orders, and that Mr. Kelso didn't go with you?

A. No, I don't know about that.

Q. Hadn't you instructed him to go to his office and draw those orders?

A. It was understood that afternoon after the talk between Mr. Sachs and Mr. Kelso that they were top repare the orders that afternoon.

Q. Didn't Mr. Kelso leave your office about the time that you gentlemen left to go over to this place?

A. I don't know about that whether he did or not.

Q. Now I will ask you to refresh your recollection in regard to the matter a little further, is it not a fact that Mr. Dave Sachs,—the request having been made to the party—and he remaining seated, didn't his brother turn to him and ask him too, and he replied that he was not feeling well, and he was going to wait there until you gentlemen returned?

A. I think he stated that.

Q. You think Mr. Dave Sachs stated that?

A. I think so. But he didn't wait there.

Q. He said, though, that he was going to wait in your office?

A. I think so.

Q. Then you and Mr. Sachs—Mr. Joe Sachs and Mr. Watts—You remember now that at the time the invitation was extended that Mr. D. A. Sachs declined it and that you three gentlemen went out?

A. I don't know whether I went with them or not.

Q. How late did you remain there at that place? That cafe we will call it?

A. Oh I was there half an hour, something like that.

Q. Didn't you remain there till five, Judge?

A. I don't think it was that late. I am quite sure it was not.

Q. Didn't you remain there, and didn't Mr. Jewett call you, and didn't you go back and sit down and after you all had three or four drinks, didn't you leave about dark, saying that you would have to go home?

A. No sir; I didn't have any conversation with Mr. Jewett that afternoon.

Mr. Hester: Which Jewett did you refer to?

Mr. Smith: Colonel Jewett.

Q. You say you don't remember about that?

A. No, I know I didn't have any conversation with Colonel Jewett.

Q. Now did Mr. Watts or Mr. Joe Sachs return to your room after you all broke up the party there at that place?

A. No, I think not.

Q. Did you see Mr. Watts or Mr. Joe Sachs after you left that place any more that day?

A. I think not.

Q. Did you see Mr. D. A. Sachs after you left that place any more that day?

A. Yes sir, I saw him at Mr. Kelso's office.

Q. Now this is Friday, Judge, we are speaking of?

A. Yes, I know it is Friday.

Q. Did he go with you back to the court house from Kelso's office then?

A. I don't know whether he walked back to the court house or whether he caught a car there.

Q. The order hadn't been entered then, that is the refusal of Mr. Connor to surrender hadn't been entered upon the books before you left Kelso's office, had it?

A. No, I think not. No.

Q. Had Mr. Kelso reported to you that Mr. Connor had refused to surrender the property before you left? Had he made a report to you before you left Kelso's office?

A. No sir.

Q. Then the report must have been made to you after you last saw Mr. D. A. Sachs?

A. Yes sir.

Q. You didn't see Mr. Sachs any more after you got the report?

A. No.

Q. On that day?

A. No. I think not.

Q. Now, on Friday, Judge, while you were over there, is it not a fact that Mr. Dave Sachs said to you when the question came up as to the surrender of this property, and you gentlemen having ascertained the fact that the property had been surrendered, didn't Mr. Dave Sachs say to you at that time, "That ended it as far as this court is concerned," speaking of your court?

A. No, I don't think he said that.

Q. Didn't Mr. Sachs ask Mr. Kelso to take the phone there and find out if the property had been surrendered to the receiver of the Federal Court, and didn't Mr. Kelso respond that it has been surrendered, after phoning, and didn't Mr. Dave Sachs say at that time, "Gentlemen that ends the matter as far as this court is concerned, the property is in the hands of the Federal Court.

A. No, I don't recall any statement of that kind by Mr. Sachs.

Q. Didn't you at that time, Judge, say to Mr. Sachs, "No it doesn't; we have got a state statute; if we can't reach them under the federal statute, we have got a state statute"; and in response to that didn't Mr. Sachs state, "I know nothing about your statutes, but the property is surrendered, and you can go no further."

A. No sir, I never made such a statement as that in my life.

By the Court:

Q. Did Mr. Sachs make any such statement as that to you?

A. No sir.

By Mr. Smith.

Q. Didn't Mr. Kelso say then that there was a state statute, and that the property could be taken under the state statute?

A. No sir, I think not; if he did I didn't hear it.

Q. Then if there was any reference to the Indiana statute that authorized the reclaiming of the property you didn't hear it?

A. No.

Q. Judge, to refresh your recollection, perhaps it is a question that you have answered two or three times, but to refresh your recollection I want to ask you if Mr. Sachs didn't say to you at the same time that this state statute was mentioned and this entire matter was under discussion, didn't Mr. D. A. Sachs say to you, "You all had better abandon this entire matter because I tell you now if you interfere with the jurisdiction of the United States court you may as well call out your militia, because you are going to have trouble."

A. No, sir, he didn't state that.

Q. That wasn't mentioned at all?

A. No, sir.

Q. You were over, Judge, at Louisville on Monday; what was your object in going over there?

A. I went over there in regard to the responses that were to be prepared.

Q. In order to prepare the responses?

A. No, it was understood that the responses were to be prepared at Mr. Sachs' office on Monday; that was agreed on.

Q. We don't want understood or what was agreed on; what was said?

A. That is what they said on Sunday.

Q. What was said on Sunday?

A. That Mr. Kelso was to come to Mr. Sachs' office; I think Mr. Sachs' asked him to come to his office on Monday morning.

Q. Are you certain of that?

A. That is my recollection of it.

Q. Who asked you to come over?

A. I don't think anyone asked me to come over; the way I happened to go over there was the sheriff came to me during the morning and wanted to know about his response for himself and the deputy, and he said that he had thought that he would get an attorney at New Albany to represent him, and I told him that as I understood it Mr. Sachs and Mr. Watts were preparing the responses for all of them.

Q. Why did you go over there?

A. And I went over there to inform them of that fact, and I told the sheriff that as they had a copy of the records I would get them and return it to him that night so that he could hand it to his attorney at New Albany and have his response prepared.

Q. Judge, didn't you call up Mr. Sachs on Monday and tell him you would be over there Monday afternoon.

A. I did.

Q. And you went over on Monday afternoon, and hadn't the order of this court of February 17th been received at your city at that time?

A. What order do you mean?

Q. I mean the order of the 17th where it recites the entering of the appearance to the judge of this court in regard to the surrender of this property or the agreement to surrender; hadn't you seen the order, that entry of the 17th before you went over there?

A. Not before I went over. No sir.

Q. You saw it after you got over there?

A. Yes sir.

Q. Now didn't Mr. Sachs, in that interview in his office, in the presence of his two brothers, and in the presence of Mr. John Watts and W. W. Watts and Mr. Kelso, say to you gentlemen, when the order was read down there, that you had better go and make the best settlement you can; this is the first I have seen of this order or know of it, and I propose to quit the entire matter right here?

A. I think he said substantially that at that time.

Q. When was that?

A. That was on Monday afternoon.

Q. Didn't he say substantially the same to you on Friday when he was notified that the property was delivered up?

A. No sir.

Q. Wasn't that the time in the presence of those gentlemen that I have named, wasn't that the time that Mr. Kelso then said, "Why, gentlemen, I want to know who is going to pay the cost?"

A. I think that was stated.

Q. Didn't Mr. Kelso then say that Mr. Watts had agreed to pay the cost, and never mentioned Mr. Sachs's name?

A. No sir, he did not.

Q. He mentioned Mr. Sachs' name too did he?

A. Yes sir.

Q. It was in the presence of these gentlemen that I have named?

A. Well I wouldn't say now; Mr. Sachs' brothers were there a part of the time; Mr. Watts' brother was there a part of the time; whether they were there at the time that was stated, I wouldn't undertake to say.

Q. You were not preparing any responses there that day?

A. No sir.

Q. And Mr. Kelso immediately employed attorneys, or at least went out for the purpose of telegraphing to get other attorneys?

A. Yes sir, that is right.

Q. Judge, don't you remember that Mr. John Watts when this question of costs arose asked you whether or not his brother W. W. Watts had become involved in any way by any promise or obligation to be responsible for any costs whatever.

A. No sir, I don't recall any conversation of that kind.

Q. Not with Mr. John Watts?

A. No sir.

Q. You do not remember of his making any such request of you that he would like to know if there was any obligation of that kind?

A. No sir, I do not.

Q. Did you hear him make any such inquiry of Mr. Kelso?

A. Did I?

Q. Did you hear Mr. John Watts make any such inquiry of Mr. Kelso?

A. Not to my knowledge.

Q. Judge, to refresh your recollection about that matter, I will ask you if you didn't state when Mr. Kelso raised that question and stated that he couldn't pay any, that you had $1300 in court that could be used for that purpose?

A. No sir, I don't think I made that statement.

Q. Nine hundred then, instead of thirteen hundred, did you state that?

A. No, I don't think I did.

Q. Did you mention anything about having money in court that you could use for the purpose of paying expenses?

A. Monday afternoon?

Q. Yes, that Monday afternoon.

A. Not to my recollection, I did not.

Q. Did you at any time before agree that that money should be used for cost purposes, or stated that you would so use it?

A. No, I think there may have been some statement of that kind made either by Mr. Kelso or Mr. Sachs in my presence and I may have said something about it.

Q. You don't have any definite recollection about it then?

A. I do as to the time you speak of.

Q. That is, that you had any such information?

A. No, sir; I do not.

Q. Judge, at the time that Mr. John Watts—that I asked you in regard to Mr. John Watts making the request of you to state to him whether or not his brother W. W. Watts was concerned in this matter or incurred any liability or responsibility by reason of costs or otherwise, if you didn't state to him that he had not, and if he didn't ask you then that you would make a statement in writing to that effect, and if you didn't agree to do it?

A. No, sir; I have no recollection of any such conversation.

Q. Do you say that you did not, or that you do not remember of any such thing having occurred?

A. I say that I did not.

Q. At the time that you went over there, Judge, on Monday wasn't Mr. Watts and Mr. Sachs talking to you in regard to their coming up to attend this court here in response to these citations?

A. On Monday afternoon?

Q. Yes.

A. Something was said about it at some time during the afternoon.

Q. Didn't you tell them that you preferred, that you and Mr. Kelso preferred that they would not come?

A. No sir, I didn't state that.

Q. Didn't you request both Mr. D. A. Sachs and Mr. W. W. Watts not to put in an appearance up here, and that you would see Mr. Hester in regard to the matter, or you would see Mr. Stotsenberg, and have him see Mr. Hester and they could arrange the entire matter and make it entirely satisfactory without their coming, but you didn't want Sachs and Watts to come up here and give their evidence.

A. No sir.

Q. Didn't that occur in that office in the presence of these gentlemen that I have located there?

A. No sir.

Q. On Monday afternoon?

A. No sir.

By the Court:

Q. Judge, I have concluded to ask you a question about the matter that I thought awhile ago probably was not material, that I want to know about. When this proceeding was begun before you to have this receiver appointed did you know that Colonel Charles L. Jewett had gone to Chicago to

see Ryerson & Son, the plaintiff, he, Jewett, at the time representing M. Zier & Company, to get them to bring suit against M. Zier & Company?

A. No, sir, I did not.

Q. If you had known that would you have entertained jurisdiction of that suit?

A. I would not have insisted on the jurisdiction of my court if I thought there was anything wrong whatever.

Q. Did you know at that time that Colonel Jewett, when he went to Chicago to get Ryerson & Son to bring suit against his client and have a receiver appointed for it, that he took $9,000 in money that had been abstracted from the funds of that company?

A. No, sir, I did not, and the first intimation I had of that fact was when Mr. Zier testified to it in this court.

Q. Would you have insisted upon the jurisdiction of your court if you had known these things?

A. No, sir, I would not.

Mr. Fairleigh: Your Honor, I can not object to Your Honor's questions; I don't think what he would have done could be proper evidence as against our client.

The Court: That may be possible, but the court will pursue this investigation as far as it sees fit.

Q. Did you know that when Colonel Jewett went to Chicago with that $9,000, that he also had received $600 as attorney's fee, and that that money had been abstracted from the funds of that company?

A. No sir, I did not, and the first information I had of that was after the hearing had begun here.

Q. Did you know that Colonel Jewett went to Chicago to get Ryerson & Son to sue his client, and have a receiver appointed for his client, that Ryerson & Son had received over $3,000 but a few days before?

A. No sir, and the first time I had any intimation on that subject was when Mr. Zier testified in this court.

Q. Did you know until after Mr. Connor had taken possession of this property that Michael Zier had abstracted from the funds of that company, by padding the payrolls of that company more than $9,000 of its funds?

A. No sir, I did not know that that had occurred, and had no information in regard to his books whatever.

Q. If you had known all of these things would you have appointed a receiver, and as receiver a trust company in which Colonel Jewett was a stockholder?

A. I would not appointed a receiver if I had known there was any fraudulent transaction with this in any way, shape or form.

Q. If you had known that this $9,600 had been abstracted from the corporations funds and turned over as you now know it was, and if you had known that this sum of over $3,000 had been paid to Ryerson & Son only a few days before that receivership proceedings had been instituted in your court, if you had known these things would you have appointed Mr. Kelso in the effort to get this property away from the bankruptcy court?

A. No sir.

By Mr. Hester:

Q. Judge Utz, Mr. Kelso was appointed receiver as the result of a petition that was filed before you as Judge of the Floyd Circuit Court?

A. Yes sir, that is my recollection.

Q. By whom was that petition filed? What attorney?

A. I think Mr. Sachs filed it.

Q. You mean D. A. Sachs, the defendant?

A. Yes sir.

By Mr. La Follette:

Q. The statement, Judge, which you made a while ago that you reached the conclusion to appoint Kelso, and called him over to see you or you to see him the next morning for the purpose of having him appointed, was reached by your own conclusion, I want to ask you whether or not on Wednesday afternoon the matter of the law governing the right to the custody of this property of M. Zier & Company was discussed before you by Mr. Sachs and Mr. Watts and possibly Mr. Jewett.

A. I think I stated that in my direct examination.

Q. Now did that argument or propositions of law that were given to you on Wednesday afternoon by those attorneys influence you in your judgment that you ought to have the receivership in your court?

A. It certainly did.

By Mr. Smith:

Q. Judge Utz, you determined on your own judgment without consultation with either Sachs or Watts to remove the trust company and to appoint Mr. Kelso, did you not?

A. I wouldn't put it that way.

Q. Well how would you put it?

A. I would say that it was done on my own motion and after Mr. Sachs had stated that he thought the trust company ought to be removed.

Q. You gave your deposition, you gave your evidence in this case heretofore?

A. Yes sir.

Q. Did you not say in that examination this: "You say in that examination of this question there, then had been no

definite conclusion reached on Wednesday during that conference? Answer. "No sir, because the attorneys didn't have anything to do or say about what the conclusion was to be; I had to determine that as I understood it myself."

A. Yes sir.

Q. That was in reference to the removal of this trustee?

A. That is what I say now.

Q. They didn't show you any authorities on that afternoon, did they, Judge?

A. They didn't that afternoon.

Q. Now you say that Mr. D. A. Sachs filed that petition to remove one receiver and appoint another; are you not mistaken in that?

A. I say that is my recollection; the records will show.

Q. No the records will show that Mr. Sachs signed it, but the record doesn't show who filed it.

A. Oh, as to who prepared it, I wouldn't say as to that.

Q. Who filed it, I am asking as to that?

A. And I don't know who filed it, whether Mr. Sachs came in person and filed it or whether somebody else did.

Q. You had instructed Mr. Kelso, though, to prepare that? You gave Mr. Kelso instructions on Friday to prepare it?

A. No I don't think I gave Mr. Kelso any instructions as to that.

By Mr. Hester:

Q. The petition was filed on behalf of the United States Tube Company, was it not?

A. Yes sir.

Q. Mr. Kelso represented the United States Tube Company previous to the acceptance of his appointment as receiver; now state to the court how, by what arrangement his representation of that company was to cease and the arrangement was to change?

A. My understanding was it was an arrangement between Mr. Kelso and Mr. Sachs.

Q. And how was Mr. Sachs to figure as attorney for the United States Tube Company who filed that petition?

A. He was to file that petition.

Q. He was to appear for the attorney for the tube company?

A. Yes sir.

By the Court:

Q. Was that the petition upon which Mr. Kelso was appointed?

A. The petition for the removal of the trust company.

Q. Was it the petition upon which the trust company was removed?

A. Yes sir.

By Mr. Fairleigh:

Q. You say that was the arrangement between Kelso and Sachs, have you any personal knowledge of that?

A. Yes sir, I think they talked about it in my presence.

Q. When?

A. Shortly before, I think the same day it was done.

Q. Where?

A. I think that was in my office.

Q. You think it was the same day it was done? What day was it done?

A. Thursday, I think.

Q. You think they talked about it Thursday in your office?

A. Yes sir.

Q. That is about Kelso transferring his client to Sachs for the purpose of filing this petition?

A. Yes sir.

Q. Who was there at the time, Judge?

A. Mr. Sachs and Mr. Kelso and myself.

Q. Was it in the morning on Thursday?

A. I think so.

Q. Was Mr. Watts there in the morning?

A. I don't know whether Mr. Watts was there at that time or not.

Witness excused.

Charles D. Kelso, called for the Government, being first duly sworn and examined by Mr. LaFollette, testified as follows:

Q. You may state your name to the Court?

A. Charles D. Kelso.

Q. Where do you reside?

A. New Albany Indiana.

Q. Are you a member of the Bar at New Albany?

A. I am.

Q. Are you acquainted with Frederick D. Connor the Receiver in Bankruptcy Court of the property of M. Zier & Co.?

A. I am.

Q. Are you acquainted with D. A. Sachs and William W. Watts?

A. I am.

Q. Did you know of the fact that suit had been instituted in the Floyd Circuit Court in the name of Ryerson & Son against M. Zier & Co.?

A. I did.

Q. Were you appearing for any parties in connection with that proceeding?

A. I was.

Q. Do you know who filed the original petition—what attorney for Ryerson & Son?

A. Nothing except what I have heard that Mr. Watts filed it and I think I have seen his name signed to the bottom of the original petition.

Q. Did you know that Jewett & Jewett appeared for M. Zier & Co. in that action?

A. I was so informed.

Q. Did you learn afterwards that proceedings were instituted in bankruptcy against M. Zier & Co?

A. I did.

Q. Did you know the fact that Frederick D. Connor was appointed by the Bankrupt Court as Receiver of M. Zier & Co.?

A. I knew that—yes.

Q. When did you learn that Mr. Connor was demanding possession of the property which before had been in the possession of the New Albany Trust Co. the Receiver appointed by the State Court?

A. I think I learned that for the first time on the 24th of January, 1903.

Q. Proceedings had been begun in the Bankruptcy Court before that time?

A. I do not know about that, whether it was in January but I learned at the time when Mr. Watts presented that petition for authority.

Q. That was in February some time?

A. Yes. sir: in February sometime instead of January.

Q. By the Court: Petition for what?

A. To come up here under limited appearance.

Q. And present the question of jurisdiction?

A. That is the first I heard of Mr. Connor's appointment.

Q. That petition in the state court was presented by William W. Watts?

A. Yes sir.

Q. Then you first learned of the condition as to the bankrupt court and the fact that there was a conflict of jurisdiction. Did you know of the fact that Mr. Watts and Henry Jewett came up to Indianapolis and presented the question to the District Court?

A. I learned that afterwards, Yes, sir.

Q. And did you learn that the New Albany Trust Co. and Mr. Watts as its attorney stated to the Circuit Court of Floyd County that they had stated in Indianapolis in the District Court that they would turn over the property of M. Zier & Co. to the Receiver appointed by the United States District Court?

A. Yes, sir, I learned that, but it was also stated at the same time that there was to be no entry made of record as to that matter.

Q. Who made that statement?

A. Both Mr. Watts and Mr. Jewett.

Q. Where was it made?

A. In the office of Judge Utz.

Q. When was that conversation had?

A. That was had on Thursday morning, I think the 19th of February.

Q. Were you present on Wednesday afternoon before Judge Utz when Mr. Sachs and Mr. Watts and Mr. Jewett were present?

A. No, sir.

Q. When were you first before Judge Utz when this matter was being discussed?

A. Thursday morning February 19th.

Q. Had there been any call on you by any of the parties prior to Thursday morning?

A. Yes sir.

Q. Who came to see you?

A. Mr. Sachs and Mr. Watts.

Q. Where?

A. At my office in the City of New Albany.

Q. At what time in the day?

A. I should say about a quarter after five o'clock in the afternoon.

Q. Of Wednesday?

A. Yes, sir.

Q. By the Court. When you say Mr. Sachs and Mr. Watts you mean the defendants?

A. D. A. Sachs and W. W. Watts.

Q. Had you received any notice that they would probably call on you?

A. Yes, sir.

Q. How had you received that notice and from whom?

A. Henry Jewett telephoned to me to know how long I was going to remain at my office and he said some one was going to come to see me and I asked him if Col. Jewett was there and made an engagement for a gentleman in my office to meet Col. Jewett.

Q. You remained in your office?

A. Yes, sir—until Mr. Watts and Mr. Sachs came.

Q. Then what conversation did you have with them?

A. They came in and Mr. Sachs did most of the talking. Mr. Watts appeared to be very much humiliated about what had occurred in Indianapolis. He stated to me that he intended to comply with his promise and Mr. Sachs said the

court would not permit the Trust Company to turn over the property and the court wanted to meet me in the morning at nine o'clock for the purpose of taking some action to prevent the property from being restored to the United States Court. Mr. Sachs and I discussed the matter and finally it was suggested that another Receiver be appointed in place of the Trust Company, that the Trust Company was going to tender its resignation and then we discussed what would be the effect of the appointment of the Receiver, what would be the trouble, if any with the United States Court, and if there would be any punishment in case the court should proceed against us for contempt and Mr. Sachs assured me that he had never heard of any person being punished for civil contempt by being confined in jail.

Q. By the Court. Who said that?

A. Mr. Sachs and finally I said to them "Well, I am willing to accept the appointment if you gentlemen will guarantee me if I am put to any cost. I am poor and do not care to expend what money I have in fighting somebody else's battle, and they agreed to do it.

Q. Who did?

A. Mr. Sachs did practically. Mr. Watts did not say much about it then.

Q. What did Mr. Watts say about it—did he make the same agreement?

A. Not at that time. Mr. Watts seemed to be very much cut up about what had occurred up here and very much humiliated and kept declaring all the time that he was going to comply with his agreement with this court.

Q. Was there some statement made to you there by Mr. Sachs about the law bearing on the case?

A. Yes, sir he said he thought the Floyd Circuit Court had jurisdiction and the United States Court did not have it.

Q. Was there an agreement then made that evening to meet next morning in the court room or in Judge Utz room.

A. The agreement was that I should meet Henry Jewett, D. A. Sachs, Mr. Watts and Judge Utz. Judge Utz in the meantime called me up and made an appointment that afternoon to meet next morning at eight o'clock.

Q. Was there anything else occurred more than you have stated that Wednesday evening?

A. There may have been some other conversation but I do not recall it now.

Q. Then after that the following morning, whom did you first meet in connection with the matter?

A. Judge Utz.

Q. Where?

A. At my office.

Q. What conversation was had with Judge Utz.

A. The Judge came in and stated that the Trust Company was about to turn back the property to the United States Court and he did not intend to permit it to go and he wanted me to accept the office of Receiver which I agreed to do. Then we went from my office around to Pearl Street and stopped in the Trust Company.

Q. Were you and Judge Utz together at that time?

A. Yes, sir.

Q. Did you meet Henry Jewett there?

A. I don't think Henry Jewett was there but Mr. Sauer and Mr. Connor were there and I called Mr. Sauer to one side and told him not to deliver that property until after the Court had taken action in the matter and he did not say whether he would or would not.

Q. Do you know whether or not Mr. Connor the Receiver was there asking for the delivery to him of the property?

A. I don't know what Mr. Connor was doing there. He was there.

Q. You heard no conversation on his part with any member of the company?

A. No sir, I did not.

Q. You had no conversation with him yourself?

A. Just to bid him the time of day.

Q. From there did you go to Judge Utz room?

A. I think I went over there in the Masonic Temple Building on a little matter over there and after I finished the business there, I went back and went over to Judge Utz office?

Q. About what time did you reach the office?

A. I think about ten minutes after nine o'clock.

Q. Who was there when you arrived?

A. No one except Judge Utz.

Q. How long did you remain there until any one else came in?

A. I think ten or fifteen minutes.

Q. Then who came in?

A. D. A. Sachs and W. W. Watts.

Q. Did they come in together?

A. Yes, sir; they came together.

Q. Was the subject of M. Zier & Co. property taken up then before any one else came in or did any one else come?

A. The law of the case was discussed and finally I said "Where is Henry Jewett? "He was to be here." And they said they did not know and I said "I will call him up by telephone and ask him why he is not here" and I called him up and he came over and he then announced that he was busy at the office and his brother would come over there and represent him in the matter.

Q. Did Henry Jewett take any part in the discussion of the question there before Judge Utz that morning?

A. Not that morning he did not.

Q. He did not file any report?

A. No, sir.

Q. How long was it before Col. Jewett came in?

A. I should say ten or fifteen minutes afterwards.

Q. In the mean time was there still some discussion about the law governing the case?

A. Yes, sir—we discussed the law a good deal.

Q. What was said by Mr. Watts about the law affecting the property.

A. I can not remember what was said particularly by Mr. Watts. While Mr. Watts was protesting all the time that he wanted to comply with the order of this court, he was protesting that he intended to comply with the order of the court, he concurred in the views of the law expressed by Mr. Sachs but he was at all times saying he desired to comply with his promise to this court.

Q. After Col. Jewett came in, what statement did he make to the court about the matter if any?

A. I cannot tell all that Col. Jewett said but he said a good deal and took quite a long time about it.

Q. Along what line did he talk?

A. He said that the Trust Company had concluded to comply with the promise it had made to this court and that it intended to turn the property over to Mr. Connor. During his talk Mr. D. A. Sachs turned to him and asked him if he had delivered up the property and Col. Jewett said he did not desire to be interrupted or insulted, I could not catch just what word he used there and then he went on with his speech to the court.

Q. I am at a loss to know just what the speech was but the substance was—

A. The substance was that the Trust Company in good faith had concluded to turn the property over to the Receiver of the United States Court.

Q. Did he discuss the law any?

A. No, sir—I think not.

Q. Did he say anything there in the presence of yourself and the other lawyers about the condition of the assets, that is the property?

A. No, sir. He was there simply to say that the Trust Company was going to act in good faith and carry out the promise made to this court. It took him a good while to say it but he finally said it.

Q. What statement was made by either of you during that meeting and how long did it last?

A. Mr. Sachs immediately said that there had been some betrayals and the court so expressed itself and both seemed very much disappointed about the action of Mr. Jewett and the meeting adjourned. I went to my office and I think Mr. Watts and Mr. Sachs went to Louisville.

By the Court:

Q. You say both seemed disappointed?

A. Yes, sir.

Q. Who?

A. Judge Utz and Mr. Sachs about the statement of Col. Jewett.

Q. By Mr. LaFolette: That was on Thursday?

A. Yes, sir.

Q. Forenoon?

A. Forenoon.

Q. Were there any other proceedings had that day or steps taken?

A. No, sir.

Q. Was there anything stated about any other meeting?

A. Why, in the afternoon Judge Utz came to my office and requested me to call up Mr. Sachs and invite him to come back the next day and I did call up Mr. Sachs and invited him to come back the next morning?

Q. Let me ask you about that meeting in the forenoon: What statement, if any, did Mr. Sacks make in your presence about what he came over for? What was he there for?

A. He was there in compliance with the previous agreement he had made with me the afternoon before to meet me there at 10 o'clock.

Q. What did he come over there for?

A. For the purpose of taking some steps to retain jurisdiction of that property.

Q. Do you know whom he had talked with prior to his coming to New Albany on Wednesday in regard to the situation of the property or the necessity for taking any steps to retain it?

A. No, sir.

Q. You don't know anything about that?

A. I don't know a thing about that.

Q. By the Court: You understand he is asking you about Mr. Sachs?

A. He is asking me about a conversation prior to Wednesday. I don't know what Mr. Sachs did or who he talked to.

Q. And you don't know why he came on Wednesday?

A. I do not except from what I learned since.

Q. By the Court: From whom did you learn it?

A. From Mr. Sachs and Judge Utz.

Q. Tell what Mr. Sachs informed you?

A. He said he came around there Wednesday afternoon for the purpose of taking some steps to retain jurisdiction of the property in the Floyd Circuit Court.

Q. By Mr. LaFollette: When you telephoned over Thursday afternoon, I believe you say it was to Mr. D. A. Sachs. Did you call Mr. Watts also?

A. No sir, —I think I told Mr. Sachs to invite Mr. Watts to come along with him.

Q. Did you fix an hour at which they were to meet you and where it was to be?

A. Ten o'clock at Judge Utz office.

Q. Then did you have any further talk yourself with Judge Utz before the meeting on Friday at 10 o'clock?

A. Yes, sir— I think I did. The Judge was very much disappointed about the action of the Trust Company in declaring it was going to turn the property over and felt aggrieved about it and he insisted that he had jurisdiction and intended to keep it—retain it.

Q. When you met on Friday morning—you did meet at Judge Utz office?

A. Yes sir.

Q. Who was present at that meeting?

A. Mr. D. A. Sachs, Mr. Watts, Judge Utz and myself and I believe the Deputy Clerk was there though I am not sure about that.

Q. You may relate to the court just what steps you took and what was said back and forth among you about the business that was being looked after?

A. At that meeting?

Q. At that meeting on Friday morning?

A. We discussed the law of the matter for about probably half an hour or so and then concluded to adjourn to my office.

Q. By the Court: You knew then that the property had been turned over to the Receiver of this court?

A. Yes sir.

Q. And that the Receiver of this court was then in possession of the property?

A. Yes, sir—we knew that.

Q. Proceed?

A. We went around to my office and then the court announced that he intended to appoint me Receiver and that he would instruct me to appoint Mr. Sachs my attorney. Mr. Sachs said he was willing to accept the position and then I said to the court "Well, I don't know whether I can serve or not. I am attorney for some parties of record and the statute says that an attorney of record cannot be appointed Receiver and the court suggested that I withdraw as the

attorney of these parties and then I could be apppointed Receiver and I did then withdraw my appearance for these parties and we agreed that I should be appointed Receiver.

Q. By Mr. LaFollette: Did you have any opportunity to confer with your clients about that withdrawal?

A. No, sir; I did not confer with them.

By Mr. Fairleigh. May I ask where that was?

A. In my office.

By Mr. Fairleigh. Was Mr. Watts there?

A. No, sir.

By Mr. LaFollette.

Q. And Utz and Sachs were there?

A. Yes sir.

Q. That was after you reached Judge Utz's office?

A. Yes sir.

Q. Was there any conclusion reached after you left as to what course you should fcllow?

A. The conclusion arrived at was that I was to be appointed receiver; but Mr. Watts dropped away from us on the way around; he left us and didn't come with us.

By the Court:

Q. He was present when the determination was reached that you should be appointed receiver?

A. Yes sir.

By Mr. Fairleigh:

Q. Where was that?

A. That was at Judge Utz's office.

By Mr LaFollette:

Q. Was there anything said at that time or prior thereto about expenses incidental to the proceedings?

A. Yes sir, I announced there that Mr. Watts and Mr. Sachs had agreed to bear the expenses.

Q. Did you state that to Judge Utz in the presence of each of the gentlemen?

A. I did, yes sir.

Q. Where was it that that statement had been made to you that you repeated in their presence?

A. At my office the evening before,—the Wednesday evening before, not the evening before.

Q. You may tell the court just what was said to you on Wednesday evening that induced you to say to the court, that they had agreed to bear the expense? You may repeat their words, if you can?

A. I don't know that I can repeat their exact words, but I said to them this. I said to Mr. Sachs principally, because Mr. Watts was walking back and forth and seemed excited and worried about the matter, that there might be some contempt proceedings or something of that sort, and

that I might be punished, and he said—might be fined for there was some costs attached to these things, and he said, that he had never heard of a person being punished in a civil proceeding for a civil contempt by being put in jail, but that I might be fined and there might be some costs attached to it; and I said, well if they would agree to stand the fine and costs that I would accept the position as receiver. That is the conversation that I reported to Judge Utz.

Q. What did they say when you said that?

A. Mr. Sachs agreed to do it.

Q. Can you give substantially what he said?

A. Well he said he would pay the costs.

Q. When you talked with Judge Utz about it over at the court room was there anything said to him about whether or not there was any money that might be ordered by the court to be applied to the expenses.

A. Yes sir, there was.

Q. You may state what was said about that?

A. There was some discussion about perhaps the court could get $900 that was in the hands of the clerk for the purpose of paying costs; that that would not be turned over to the federal court; there was some discussion about that also.

Q. You spoke of money that was in the hands of the clerk. Was that money that had been paid in in connection with the suit or the receivership in the M. Zier & Company case?

A. Yes, some Louisville concern had paid it in, for the purpose of securing the completion of some contract.

Q. It was still in the hands of the clerk?

A. Still in the hands of the clerk.

Q. At the time when you talked to the court about withdrawing as attorney for certain parties connected with the case, what was said about the condition it would leave them in as to their being represented in court by anyone?

A. I said that Mr. Sachs could represent them.

Q. What did Mr. Sachs say about that?

A. He proceeded to represent them by signing a petition for the removal of the trust company.

Q. That was the tube company that you have reference to particularly?

A. Yes sir.

Q. The United States Tube Company?

A. Yes sir.

Q. That company had been your client prior to the arrangement about your being appointed receiver?

A. Yes sir.

Q. And with that talk and agreement with Mr. D. A. Sachs he assumed to act for the company?

A. Yes sir, he signed the petition.

Q. And acting for the company?

A. Acting for the company in that matter.

Q. Acting for the company in that matter he made out and filed or caused to be filed a petition showing to the court—

Mr. Miller: I object to that, if your Honor please.

Mr. LaFollette: I was going to ask whether or not he filed or caused to be filed in the Circuit Court of Floyd county a petition on behalf of the United States Tube Company.

The Court: If who did?

Mr. LaFollette: If Mr. D. A. Sachs, acting as attorney.

Mr. Miller: He was reciting that that was what Mr Sachs did, and was asking if that wasn't so. And we are objecting to it.

Mr. LaFollette: I will withdraw the question.

Q. I will ask you if it is not a fact that Mr. D. A. Sachs accepting the position as attorney for your client, the United States Tube Company, filed in its behalf a petition before the judge of the court in vacation, alleging that the New Albany Trust Company, receiver of M. Zier & Company, had wrongfully and unlawfully and without leave of the court, turned over the property of M. Zier & Company, which had it in its possession as receiver, to Frederick D. Connor, who was acting as receiver, appointed in bankruptcy in the United States District Court of Indiana, and that the company, the New Albany Trust Company as such receiver was at the time threatening and would if not prevented turn over to Frederick D. Connor, receiver, all the other assets of M. Zier & Company which still remained in its hands as such receiver?

A. Yes, sir, he signed that paper and swore to it before a notary public.

By the Court:

Q. D. A. Sachs did?

A. Yes sir.

By Mr. LaFollette:

Q. And it was upon that proceeding and petition that the New Albany Trust Company as such receiver was removed from its position as receiver.

A. It was on that petition and in connection with its report that it had delivered the property over.

Q. And it was after that that you were appointed receiver was it not?

A. Yes sir.

Q. I want you to state to the court whether or not it is not a fact that after you were appointed, D. A. Sachs, the attorney acted for you as your attorney?

A. He certainly did.

Q. You may state to the court whether or not under his advice and direction—

Mr Miller: (Interrupting)

If your Honor please I object. Every question he asks is for a conclusion.

Mr. Kealing: He has a right to finish his question:

Q. (Preceding question read by the stenographer and completed by the attorney as follows): You may state to the court whether or not under his advice and direction you as such receiver made demand upon Frederick D. Connor, the receiver appointed by the bankrupt court for the possession of the property which he had received from the New Albany Trust Company?

Mr. Miller: I object to that because it calls for a conclusion. I think it is only proper for him to tell what Mr. Sachs said to him upon that subject; and then it is possible for the court to determine whether it was under his advice or direction.

The Court: I think that is better. I am not deciding that that question is improper, but I think the other way is the better way to get at it Mr. LaFollette. Ask him what was said; This witness is intelligent, and you can ask him what Mr. Sachs said upon that subject, if anything.

Q. You were appointed receiver by the Judge of the Floyd Circuit Court after the filing of the petition that I have referred to.

Mr. Miller: He has stated that.

A. Which petition do you refer to?

Q. I mean this one for the tube company; was it after that that you were appointed.

A. Yes sir.

Q. What, if anything did D. A. Sachs say to you after your appointment in regard to your duties, and what you should do as receiver?

A. Well we discussed the matter at length and went to my office and investigated the statutes, the statutes of Indiana, as to how we should proceed in the matter. We turned to the statute in regard to receiverships, and consulted about how the statute should be construed, and he advised me to make a demand on Mr. Connor, and went with me as far as upper 7th street, when I was on my way to make the demand he and Mr. Watts.

By the Court:

Q. On your way up to Mr. Connor to make the demand?

A. Yes sir.

Q. Did they both go with you?

A. Yes sir.

By Mr. LaFollette:

Q. How near is 7th street to where Mr Connor lives.

A. We separated at 7th and Spring, Mr. Sachs and Mr. Watts, and Mr. Connor lives on Main, two squares away a little above 7th street.

Q. Do you know where Mr. Sachs and Mr. Watts, were going that caused them to go that far with you?

A. Yes, they were sauntering along waiting for a car, to catch a car to go to Louisville.

Q. What, if anything, was said to you about what you should do if Mr. Connor refused to deliver to you the property on your demand?

A. Oh, the whole matter had been arranged; the papers had been prepared that afternoon at my office by Mr. Watts,—or Mr. Sachs and myself.

By Mr. Fairleigh:

Q. Did you say Mr. Watts was there?

A. No Mr. Watts wasn't there: Mr. Watts came in, I believe, once during the afternoon, but he went out right away; he didn't stay long. And the papers were prepared; we anticipated that Mr. Connor would refuse to deliver the property, and the writ was prepared and the order of the court and everything. Everything was ready before Mr. Sachs went to Louisville.

By Mr. LaFollette:

Q. When you say the orders, had you prepared the orders that you would ask the judge to sign?

A. Yes sir.

Q. Had he signed them yet?

A. He had only signed the order requiring me to make a demand on Mr. Connor.

Q. That one had been signed?

A. That one had been signed.

Q. And before you made that demand, you had anticipated a refusal and prepared the papers for the subsequent steps up to the time of having the sheriff go out and take the property?

A. Yes sir.

Q. Then after you went out and made demand on Mr. Connor for the property you didn't see Mr. Sachs any more that evening?

A. No, he took a car, I suppose, and went to Louisville.

Q. After the refusal you may state then what you did as to causing or asking the judge to sign the further orders in regard to the sheriff?

A. Well I reported back; I went to the clerk's office in the court house to sign the report which had been prepared previously, wherein I showed that Mr. Connor had refused to turn over the property, and then the court signed the other order, which was there ready for him to sign.

Q. Do you know who delivered the writ to the sheriff?

A. My impression is that the court handed the writ to the sheriff, but I am not certain about that.

Q. Did you go with the sheriff when he went down to the plant?

A. No, I remained at the clerk's office.

Q. Until the sheriff returned and he reported that he had possession, but stated that there was a man out there in the property, and I declined to go out and take possession, for the reason that I wanted full possession or none at all; and the sheriff went out again for the purpose of getting this man out, and he came back and reported that he had put him out and was ready then to put me in possession.

Q. What time was it that you were taken out by the sheriff, or went out and took possession of the property?

A. It was between eight and nine o'clock; just exactly when I don't know.

Q. Of Friday night?

A. Friday night.

Q. I believe you stated a while ago that during the afternoon while the papers were in course of preparation Mr. Watts came into your office?

A. Yes.

Q. But wasn't there all the time?

A. No he wasn't there all the time.

Q. Was there anything said by him at any time after you were appointed receiver or immediately before you were appointed, when the matter was being talked on between you and Mr. Sachs,did he join at any time in the conversation as to the methods that you might adopt or resort to?

A. Mr. Watts, he protested all the time that he wanted to comply with the order of the court, but he gave opinion in regard to the law—

The Court: (Interrupting) Answer the question. You are not answering the question that was put to you. Read the question.

Q. (Preceding question read by the reporter from his notes.)

A. No I don't think he did, excepting this: That while we were preparing the notice to serve on the trust company and Mr. Watts, he said I will get out of here and go around to Goodbugs, and you can send the sheriff around there, and he will find me there, and you can serve the notice

on me there. We went around there after awhile, saw Mr. Watts and took lunch with him, and he said the sheriff had served him.

Mr. Fairleigh;

Q. What notice was this?

A. That was the notice for the removal of the New Albany Trust Company.

By Mr. LaFollette:

Q. During the time that these matters were being discussed did you hear of the proposition that was talked of of having the trust Company cited for contempt?

A. Yes I heard that.

Q. And did you, in the same connection, hear the matter talked of of citing Watts for contempt also?

A. Yes sir.

Q. You may state to the court what, if anything Mr. Watts himself said about that?

A. Well he said he ought to be treated the same as the trust company.

By the Court:

Q. Who said that?

A. Mr. Watts.

Q. He wanted justice to be dealt out impartially?

A. Well I don't know what he wanted done.

By Mr. LaFollette;

Q. What day was that on which that matter was talked of? On Friday?

A. On Friday.

Q. At what time were the responses to be made in answer to the citation for contempt?

A. I think they were out for Saturday? they were afterwards postponed until the Wednesday following.

Q. After you took the property on Friday night did you continue in possession then until Saturday night or Sunday?

A. Yes I continued in possession, I suppose, until Mr. Connor took possession.

Q. Well that is what I mean; how long was that?

A. I don't know when Mr. Connor took possession.

By the Court:

Q. It was after your trial here.

A. Well whenever it was that is the time.

By Mr. LaFollette:

Q. Following the time when you took possession on Friday night, did you have any conference with Mr. Sachs or Mr. Watts before a citation was served on you to appear here?

A. Oh yes.

Q. When did you have the next meeting?

A. Saturday.

Q. What time Saturday?

A. Oh I suppose it started at ten o'clock in the morning and lasted until late in the afternoon.

Q. Where did you meet them?

A. They came to my office.

Q. When I say meet them, did Mr. Watts and Mr. Sachs come there together?

A. Yes they came together.

Q. Do you know what they came there on Saturday morning for?

A. Mr. Watts came for the purpose of filing his response to the proceedings for contempt, or asking the court to defer the time in the matter.

Q. What did Mr. Sachs come there for, if you know?

Mr. Miller: I think he had better state what he said.

A. Well I don't know what he came for; I know we went out to the plant together, Mr. Sachs and I did, and went through it.

Q. What, if anything, did he say to you on that visit about what you should do in the plant?

A. Well, we discussed the question as to whether we should operate or not, and it was concluded to operate the plant beginning Monday.

(Whereupon the court adjourned until to-morrow, Wednesday morning, at nine o'clock.)

WEDNESDAY, MARCH 1, 1903.

MORNING SESSION. 9 A. M.

The court met pursuant to adjournment, present the same as on yesterday.

The Direct Examination of the witness Charles D. Kelso, was resumed as follows:

Questions by Mr. LaFollette:

Q. What was said if anything about any further or different steps to be taken before the court, or in connection with this matter on that day?

A. Mr. Watts advised Mr. Sachs and I to go to the Deputy United States Clerks office at New Albany. He said that he had been there and had looked over the record and had failed to find any entry or order which set out the proceedings had in this court on the 16th of February. He suggested to Mr. Sachs and I that we go there and examine the record so that we could verify his statement about it.

By the Court:

Q. When was that?

A. That was on Saturday.

By Mr. LaFollette: That was after you had taken possession of the property?

A. Yes sir, he had before represented to us there would be no such order made.

Q. Well what statement had he made about that order?

A. He represented that the court had agreed that no such order would be entered; that is to say that the record wouldn't show anything that took place here on the 16th of February, but that the original order would stand.

Q. Well you knew, and Mr. Sachs knew,—that is you talked together about the original order, and the order of adjudication?

A. Oh yes, the first order we knew all about it, because we had talked about it.

By the Court:

Q. That is the order for the appointment of Mr. Connor as receiver, and his order to take possession of the property?

A. Yes sir.

By Mr. LaFollette:

Q. What was said, if anything, about that order that had been originally made being still in force?

A. Well Mr. Watts said that that order would stand.

Q. And did you and Mr. Sachs go to the Clerk's office at New Albany?

A. We did. I examined the files there, and found no order, but found a letter from Mr. Butler, the Clerk which Mr. Sachs told me to take a copy of; instead of taking the copy I asked the Deputy Clerk to let me have the original letter, and he let me have it and I took it to my office and had a copy of it made and afterwards returned it to him.

Q. That was a letter stating what?

A. What he would do—

Mr. Miller: If Your Honor please, I think the letter had better be produced?

Mr. LaFollette: It would be the best evidence of course of what it contained; I am not particular about it.

Mr. Miller: I don't know that it is at all material.

Mr. LaFollette: No, it is not.

Q. You got the letter from the clerk when you and Mr. Sachs were together.?

A. Yes sir.

Q. You each of you read it?

A. Yes.

Q. What time on Saturday, if you know, did Mr. Sachs and Mr. Watts return to Louisville?

A. It was late in the evening.

Q. Was Mr. Watts with you, and Mr. Sachs, during the day most of the time? They were over in New Albany?

A. Not most of the time; Mr. Sachs and I were together most of the day, but Mr. Watts wasn't with us most of the time; he was with us frequently.

Q. What time in the day, if you know, was the extension of time given by Judge Utz in the contempt proceedings?

A. I don't know. I wasn't there. We were over at the Deputy Clerk's office at the time I understood after Mr. Moser and Colonel Jewett and Mr. Watts were before the court.

Q. At the time they were before the court you and Mr. Sachs were not present?

A. We were not present.

Q. When was it that you received the notice or citation to appear here in this court on account of the retaking of the property?

A. About half past nine, Saturday night.

Q. How soon after that notice was served did you communicate with M. Sachs or Mr. Watts?

A. I communicated immediately by telephone to Mr. Sachs.

Q. On Saturday night?

A. Saturday night.

Q. What was said between you by phone?

A. I told him that I had just been served by the Deputy Marshal with a rule to show cause, and told him that he was also included in the rule. He wanted to know what the charge was against him, and I said acting as my attorney.

Q. And what response did he make to that?

A. Well he said he didn't see how they could proceed against him. Then we made the engagement to meet the following morning.

Q. Where were you to meet?

A. At Judge Utz's office.

Q. Did you communicate with Judge Utz on Saturday night?

A. Yes; oh, yes I went down to Judge Utz's office.

Q. Did you talk with him before you communicated with Mr. Sachs?

A. Not about the time of meeting the next day; that was afterwards communicated to Mr. Sachs after I had met Judge Utz.

Q. So that the arrangement for the meeting at Judge Utz's office was with his understanding and consent?

A. Mr. Sach's?

Q. No, Judge Utz?

A. Oh yes.

Q. Was there any suggestion or statement made that Mr. Watts should also meet with you?

A. Well I don't know what was said in the telephone communication.

Q. Well, I mean was there anything said by you or Judge Utz about calling Mr. Watts into conference?

A. Well Judge Utz and I concluded to have Mr. Watts come over also; but I don't know what was said in the communication by telephone, because we sent some young man out to telephone to him; I don't remember who it was, now.

Q. Then did you meet on Sunday morning?

A. Yes sir.

Q. Who was present at that meeting?

A. Well, there was Judge Utz; I think the Deputy Clerk was there, and myself, first. We waited some little time at Judge Utz's office, and I looked out the window and saw Mr. Watts and Mr. Sachs coming down Spring street; we immediately went down from Judge Utz's office, and met them at the court house door and told them we would go over to my office as there was no fire at the court house.

Q. And so the meeting was had at your office, was it?

A. Yes sir.

Q. At that meeting Mr. Kelso, you may state fully what the conversation was; what was said by any of the parties present?

A. Well, Mr. Sachs and Watts and Judge Utz and I discussed the law; I couldn't say just what we said, but the opinion was expressed that the Floyd Circuit Court had jurisdiction still, and I then asked Mr. Sachs about the provision in the rule served on me about redelivering the property and not interfering with it; I said I don't want to violate the order of the court, and asked him if I hadn't better turn the property back, and he said, no, that don't mean that; you can turn it back if you conclude to do so when you go up to answer the rule; and we discussed the effect, and the form and substance and contents of the responses to the various rules, and finally it was agreed that I should come over to Mr. Sachs's office the next morning. Then the meeting adjourned. It adjourned along about 12 o'clock.

Q. Did you have any further talk or meeting there with Sachs or Watts on that day?

A. I had a talk with Mr. Sachs in the afternoon about five o'clock. My baby was sick and I had come to town to get some medicine, and coming up in the car I met Hester, and asked Mr. Hester about what had taken place up here on the 16th. And he told me. I said, there was no order of that kind. Hester said, yes, there is, and I have the order at my office. Well, I said, we might as well quit if that is so. I

said I would like to get the order. When I went back home I telephoned to Mr. Sachs about it, and he said well, we are done for if that is true, because I am a great fellow for records.

Q. Sachs said that?

A. Yes; and he said, don't come over now until you get that order from Mr. Hester, or a copy of it. I went to the office of the Deputy Clerk the next morning about nine o'clock and waited for him some time and then went to Mr. Hester's office. Mr. Hester had the order, and wouldn't let me have it until he had taken it down to the Deputy Clerk's office. Finally I got the order at the Deputy Clerk's office and I took it over to my office and had a copy made of it, and then I went over to Mr. Sach's office at Louisville.

Q. Have you a copy of that order now?

A. I left it with Mr. Sachs.

Q. You left it with Mr. Sachs?

A. Yes.

Q. Was that Sunday afternoon that you went over?

A. No, it was Monday morning. I telephoned to him about that Sunday afternoon when I got home.

Q. Then on Monday morning you went over to Sachs' office?

A. Yes sir.

Q. You had a copy of that order with you, had you.

A. I had a copy of that order with me.

Q. Had you also arranged with Judge Utz to go to Louisville that morning, Monday?

A. No, I made no arrangement with Judge Utz.

Q. After you got to Louisville and went to Sachs' office, what if anything was said about calling Mr. Watts in?

A. Well I don't know. Mr. Watts came there. You see they have a very large building there, and the telephone is in the front office; I don't know how far away it is; and we were in the back office. What occurred over the telephone I don't know, but Mr. Watts came there.

Q. About what time in the forenoon was that meeting at which you and Mr. Sachs and Mr. Watts were present in the office at Louisville?

A. Between ten and twelve o'clock; I couldn't state just the time.

Q. And what was said there?

A. Well Mr. Watts was shown this order, and he said that wasn't according to his understanding.

Q. As to the matters it contained, you mean?

A. No, not that; but there was not to be any such order put of record.

Q. Well then what further was said?

A. Well then we entered into a discussion of the law. Mr. Maurice Sachs, this gentlemen sitting here, (indicatting), Mr. Jo Sachs, Mr. D. A. Sachs and Mr. Watts and myself taking part in the discussion.

Q. As to the law that would govern it in the face of that order?

A. As to the jurisdiction of the courts, yes sir.

Q. Well the question that you were there mainly to discuss was as to what kind of response to make, was it?

A. Yes sir, that is what I went over for, to get them to prepare my response.

Q. The question of law had been pretty thoroughly discussed before as to what they understood to be the law governing the case, wasn't it?

A. Well, Mr. Maurice Sachs had never discussed that question with me before; Mr. D. A. Sachs and Mr. Watts had.

Q. In the discussion on Monday was there any new authorities or different citations presented to you than what there had been before?

Mr. Fairleigh: If the court please, there is no dispute about what the opinion of these gentlemen was; what professional opinion they had, or that they felt any doubt about it; and it occurs to me that this is consuming too much time.

Mr. LaFollette: I asked this question for the purpose of showing, or learning, whether or not a different conclusion had been reached there that morning than what had been reached before, tending to delay the response.

The court: I will hear the testimony.

A. No, no different conclusion was reached, for they still contended that the Floyd Circuit Court had jurisdiction.

Q. Well then, you may go on and state what was said and done with reference to the preparation of the responses?

A. Well I don't say anything was done in that direction at all. We talked all day about the law. Finally Mr. Watts' brother came and suggested that Mr. Watts ought to retire from the meeting; that he ought not to be connected with it at all. I said I don't see any reason why he should retire; he was there; he was ruled to answer, or respond, and I couldn't see that his being there now would endanger him in any way. So he staid a while and finally announced that he had an engagement with Mr. Henry Jewett to meet him at his office at half past one, I think it was, and he left.

Q. Was there anything said as to the purpose of the meeting with Mr. Jewett?

A. Yes, Mr. Watts wanted Colonel Jewett to come up here and represent him in the contempt proceeding. I told Mr. Watts that Colonel Jewett wouldn't come; he need not expect that.

Q. But notwithstanding you statement he left there to see Col. Jewett about that matter?

A. Yes.

Q. What was said, if anything, about his having gone out, after he did go, by Mr. Sachs or yourself, about Watts' absence?

A. Notning that I know of particularly.

Q. Did Judge Utz come in, in the meantime?

A. No, Mr. Sachs and I went out to lunch, but we left word with the colored janitor that if Judge Utz came—Mr. Sachs describing him—to tell him to wait till we returned. I think Judge Utz had telephoned over that he was coming.

Q. Well was there anything further said about what you would do in the way of responses before you came back from lunch? You were still together, as I understand?

A. We were still together. No, we didn't talk about that. We met a great many gentlemen, and talked with them; they were joking with Mr. Sachs about being proceeded against for contempt.

Q. What was said during the afternoon finally as whether or not Mr. Sachs would come up with you, on Monday.

A. He finally concluded not to come.

Q. Well what was it he said in connection with that, as to why he wouldn't come?

A. Well Mr. Watts came back in the afternoon, and announced that Colonel Jewett wouldn't come up here and difend him, and Mr. Watts said that he was coming any way. We finally got into a discussion as to whether it was policy for him to come; I advised Mr. Watts not to come, because I thought the court was after him, from what I heard at New Albany, and he concluded not to come. Mr. Sachs said he wouldn't come because he didn't want to testify against his friend, Mr. Watts.

Q. Well did he state to you there, or was there anything said as to what matters he might be required to state that he didn't want to tell?

A. Oh well he didn't state them directly; I knew what he didn't want to tell. At least I thought I did.

By the Court:

Q. What was his language when he said he didn't want to come here, or wouldn't come here?

A. Well he said he would rather go to Jamaica than to come up here, or appear here.

Q. Mr. Sachs said that?

A. Mr. Sachs said that.

Mr. Miller: My understanding is that Jamaica is a pleasant place to go to.

The Court: He doesn't seem to have availed himself of the option.

By Mr. La Follette:

Q. What time in the afternoon was that statement made to you?

A. Along about three or half past three o'clock.

Q. Well when you learned that neither Mr. Watts nor Col. Jewett, nor Mr. Sachs, — that Mr. Jewett wouldn't appear for Watts, and Watts would not come and Sachs had concluded not to come, what statement did you make about it?

A. Well I said that I was going out to telephone to Indianapolis for a lawyer.

Q. What if anything did you say to them or either of them there about the expense that would be incident to the proceeding?

A. I asked them if they were going to carry out their agreement to put up the expenses. Mr. Watts said: You know I couldn't bind Ryerson & Son; you know an attorney couldn't bind his client to put up money, and they said they wouldn't put up anything; and I recognize the fact that I would have to bear my own expenses.

Q. At the time that the matter of expense was talked about, was there anything said to you that the expenses would be taken out of the money—that is charged to Ryerson & Son, or whether they would pay them?

A. No, nothing was said about Ryerson and Son in the beginning. This was said by Mr. Watts over in Mr. Sachs's office on Monday.

Q. What if anything was said,—going back now to the time when you talked about expenses earlier,—what was said if anything by either of these parties in the presence of the judge, or by the judge, about making an allowance out of the funds of the M. Zier & Company property, to you and to the attorney?

A. Well they advised,—both Mr. Watts and Mr. Sachs,—that the court certainly had the right to retain the $900 under the ruling in the 184th United States case; that it was in possession of that fund and had the right to pay the expenses of the court.

By the Court:

Q. There are two cases in that volume, 184th United States; which case is it?

A. The Comingor case, I think it was.

Q. That is the case that Mr. Sachs was in?

A. Yes sir.

By Mr. LaFollette:

Q. What if anything was said about making an allowance of $1,000 to the attorney or to the receiver, and $400 to the other party?

A. Well the Trust Company had agreed to report to the Floyd Circuit Court and have a settlement with the Court. Mr. Watts claimed $1,000 as attorney and the Trust Company was to receive $400.

By the Court:

Q. I don't understand that. Who did Mr. Watts claim it for?

A. As attorney for the trust company in the matter of the receivership of M. Zier & Company.

By Mr. LaFollette:

Q. That was for services in the suit in the State Court prior to this order to turn over the property?

A. Yes sir.

Q. That didn't have reference then to the expenses of yourself and Mr. Sachs?

A. No.

Q. Well after you had gone out to telephone to Indianapolis, was there anything further said over at Louisville on Monday afternoon about the steps that were to be taken and matters done?

A. I came back and reported to them that I was unable to get the gentleman that I went out to employ and said I was going home and make preparations to go to Indianapolis right away. Judge Utz and I started out and Mr. Watts called me to one side, spoke to me, said he was sorry it happened and anything he could do for me he would gladly do himself if he could; and then we left, went up to the Western Union Telegraph office, and I telegraphed up here.

CROSS-EXAMINATION.

Questions by Mr. Smith:

Q. Mr. Kelso, I believe you are a lawyer?

A. Yes sir.

Q. How long have you been in the practice?

A. Since 1885.

Q. Since '85; you are one of the parties who were cited to appear here in this court?

A. Yes sir.

Q. And were convicted on the rule?

A. Yes sir.

Q. Now in jail?

A. Yes sir.

Q. Under what sentence?

A. Sixty days.

Q. How long a time have you served on that sentence?

A. Since last Tuesday a week.

Q. You are a stockholder, I believe, and were at the time of your appointment as receiver, in the New Albany Trust Company?

A. I am not certain I am a stockholder now. I ordered my stock sold.

Q. You were at that time?

A. I was at that time.

Q. You were representing a good many creditors as against the M. Zier & Company corporation were you not at the time these troubles arose and continued?

A. Well I was representing the New Albany—or the Indiana Water Company, that had a small claim for water, monthly rental; the United Gas & Electric Company that had a small amount due; and then I represented the United Stated Tube Company; and I represented the house of Standard and Gamble for some boilers that had already been procured.

Q. The tube company was the claim that you say on Friday you turned over to Mr. Sachs?

A. Yes sir.

Q. In order that he might have a standing in court to file a pleading?

A. Yes, sir.

Q. I believe you said upon yesterday that on Saturday—no, Friday I mean, when the suggestion was made as to your being appointed receiver and when you were trying to arrange the orders that you were attorney of record, and it was then on that day further suggested by the court that you withdraw as attorney of record, in order to qualify yourself as receiver?

A. That is true.

Q. When did that court adjourn finally that term, Mr. Kelso?

A. I don't remember what day it was. I think it was the 14th of February?

Q. Was it not on Saturday, the 14th of February?

A. I think it was.

Q. When did Mr. Watts and Mr. Jewett come to Indianapolis for the purpose of intervening here in the federal court?

A. I don't know.

Q. Don't you know that they were here on the 16th and the 17th?

A. I have heard they were; yes.

Q. You know that they were bock there on the 18th?

A. No, I don't know that.

Q. You don't know that they were back at New Albany on the 18th?

A. On the 18th of February?

Q. Yes.

A. Yes sir, I know that; yes sir, they were at my office, Mr. Watts was on the 18th.

Q. Don't you know as a matter of fact that on the 14th of February in the Floyd Circuit Court before these gentlemen left for this city, that they filed a petition asking for advice and authority to intervene in this court?

A. Well I heard Mr. Watts talking about that, about having authority for a limited appearance here; yes I knew that.

Q. Now you say you withdrew as attorney on Friday in order to qualify yourself? That was the 20th? In order to qualify yourself to be appointed receiver?

A. Yes.

Q. That you had discussed the questions upon that day in regard to the Indiana statute which did not permit you to be appointed if you were attorney of record for any of the creditors?

A. Yes, sir.

Q. I want to read to you the order as of February the 14th. This is the order in the transcript that is filed as an exhibit here with the response and it reads as follows: "Comes now the New Albany Trust Company, receiver herein and files its petition herein showing to the court divers matters concerning the filing of a petition in the District Court of the United States for the district of Indiana by the Inland Steel Company, John C. Thruston and Dey Time Register Company, as creditors of said M. Zier and Company, in involuntary bankruptcy, and a petition seeking the appointment of a receiver therein to take charge of the assets in this courts possession." I read that part of it merely to call your attention to the petition that was filed upon which the following order was made:

"And said receiver is hereby ordered and directed through its attorney, to proceed to Indianapolis, Indiana, and there by a limited appearance and by protestation against appearance, only, by petition upon such appearance only, lay before said district court of the United States for the district of Indiana the facts with regard to the matters here, said injunction, restraining order, and said estoppels and to suggest to said court the orders of this court and the fact that had it been fully informed, as is believed by this court, its order with respect to the assets herein would at the most, have been a direction to make an application to this court at the proper time and in the proper way for delivery of the said assets to such district court's receiver or trustee after proper disposition and settlement

of the matters herein. The court being further advised and on motion of said New Albany Trust Company, receiver, it is ordered that the Inland Steel Company, John C. Thruston and the Dey Time Register Company, be and they are hereby ordered to appear and show cause why they have prosecuted said petition in involuntary bankruptcy why they have filed said petition seeking the appointment of a receiver for the assets of this estate, why they have sought to take from this court the assets of this estate, why they should not be punished for contempt for disobeying the orders of this court without first obtaining leave of the court by petition of intervention or order in this cause. And they are hereby commanded to show such cause on or at the time of the first day of the next term of this court. And service of a copy of this order upon Jacob Herter and George H. Hester because of their apparent representation of said petitioning creditors and then said co-counsel for the purpose thereof on all persons and parties. And it is further ordered that this court shall retain such control of said matters as may be necessary for the purpose of the entry of any and all such orders as may be deemed proper and necessary herein and therein. And Jacob Herter and George H. Hester such attorneys now being present in court and Hester having been heard in opposition to the said petition and having notice of the entry of this order, it is now ordered that no other or further notice hereof need be given the said Inland Steel Company, John C. Thruston and Dey Time Register Co., petitioners in said bankruptcy proceedings. And comes now C. D. Kelso and asks leave of the court to withdraw as the attorney of record for the following named parties: United Gas and Electric Company, United States Tube Company, Indiana Water Company and Simon David and the court now permits the said C. D. Kelso to withdraw herefrom." Now this order bears date according to the certificate of the clerk as of the date of February the 14th, and as of the same date that the petition for advice was filed by Mr. Watts in the latter court. Now do you desire to explain your evidence on yesterday and this morning as to your withdrawal of these claims on Friday the 20th, and explain why it is that you said that you withdrew on account of the fact that you were going to be appointed receiver, with in truth and in fact they were withdrawn at least six days before the appointment of another receiver was suggested?

A. Yes sir, I can explain that. Mr. Sachs claimed that he was a great fellow for records, and that the record was the thing we had to depend on. He said that he had an experience with the district court of Kentucky one time, and that

his experience was, while we were working, the other fellows were working—

Q. (Interrupting). When did that conversation take place?

Mr. Kealing: Let him explain.

A. (Continuing). He said that he had filed in the court, I don't know what sort of a paper, he called it a paper, and that he took the precaution to have the clerk make a certified copy of it; that when the case was over and the bill of exceptions was prepared, in looking over the record he found that instead of filing the paper of record, the record only showed the tender of the paper, and for that reason he always took the precaution to have certified copies. It was suggested on Friday by Mr. Sachs that the record be fixed in that way. This entry of February 14th was not entered of record on February 14th, but was entered after that time, and this little memorandum here about my withdrawal was added on to the entry after the entry had been put of record by the clerk; and that is my explanation of it.

Q. Who added it to the entry Mr. Kelso?

A. I think the deputy clerk did.

Q. The deputy clerk?

A. After the order had been signed; the order had not been signed, the last day of the court we have a great many things that are not put of record; they are left on the files to be entered by the clerk on the record, and when the record is written up then the court reads them and signs the record.

Q. You say the order, then, had not been drawn up on the record.

A. No, that little end of the order had not been.

Q. Had the other order been drawn up?

A. It had been drawn up, and left with the clerk and was put on record; and then Mr. Sachs and I drew that little entry there and I took it down and left it with the clerk and it was added. So that it is how happened.

Q. Was that done without the knowledge of the judge?

A. No it was done with his knowldge.

Q. Done with his knowledge?

A. Yes sir.

Q. Did you not know that you could not withdraw as attorney of record six days after the court had adjourned? Did you not as a lawyer know that fact?

A. I knew that, but the record was there and the Court said he would show that on the record. Yes sir, I knew it.

Q. Didn't you know as a lawyer that they could not show on the record a transaction that had taken place six days after the Court had adjourned?

A. Yes sir.

Q. Why did you insert it, then, or have it done?

A. Because the court asked me to do it.

Q. The court asked you to do it?

A. And the court wanted to have it done, and he wanted the record to stand in that way.

Q. It was, then, at the suggestion of the court that you had this interlineation made in that order?

A. At the suggestion of the court and Mr. Sachs.

Q. Where was it Mr. Sachs made that suggestion?

A. At my office.

Q. Who was present?

A. Judge Utz and myself and Mr. Sachs.

Q. When was that?

A. The morning of February 20th—19th, I mean.

Q. That is, on Thursday?

A. Friday. Friday was the 20th.

Q. Now, Mr. Kelso, didn't you say in your evidence upon yesterday that when you and Judge Utz and Mr. Sachs and Mr. Watts were in Judge Utz's court, or rather in his court room there, upon February 20th, that this discussion came up, and it was there that Judge Utz suggested that you withdraw of record and you did withdraw?

A. I may have said that but I was mistaken about that.

Q. What has refreshed you now that it occurred over in your office?

A. Well it just comes to my mind that that is where it occurred.

Q. You have no data, or anything particularly, that called it to your mind except that you now remember that it occurred over in your office?

A. Yes, there is so many things that occurred there that I am liable to get confused about these things, but I am satisfied it occurred in my office.

Q. Do you know it occurred there?

A. I think it did.

Q. Then you are not positive?

A. I think I am now, because it was prepared on a little type-written sheet of paper at my office and dictated to my stenographer.

Q. Then it was not in the order—

A. (Interrupting). Oh, no.

Q. (Continuing). That had been furnished by Mr. Watts?

A. Oh, no.

Q. As drawn up under his petition?

A. No sir.

Q. And it was furnished by you, and as you said dictated at your office?

A. Yes sir.

Q. And you think Judge Utz was there and suggested it?

A. I think he was.

Q. And you had it inserted by the Deputy Clerk in the record.

A. No, I didn't have it inserted; the court had it inserted. I couldn't control the records. I took it down there and the court ordered him to do it.

Q. Didn't you have as much right to have it inserted in there as any judge did to have it inserted in there?

The Court: That is not a proper question to the witness.

Q. Who was present at your office when Mr. Sachs suggested that that order be made in that way.

A. Mr. Sachs, Judge Utz and myself.

Q. Was Mr. Watts there?

A. No, he wasn't there.

Q. Where was he?

A. I don't know.

Q. Why didn't you tell us about this yesterday in telling us about what occurred in your office?

A. I wasn't asked about it.

Q. Well you were sworn to tell the whole truth, and the whole conversation that occurred there?

A. Yes.

Q. Why did you omit this?

A. Because my attention was not called to it particularly.

Q. It was not a matter of sufficient importance—

Mr. Keeling: (interrupting) I submit that is objectionable. He has already answered that he wasn't asked about it.

Mr. Smith: I don't think my question was completed.

Q. It was not a matter of sufficient importance to occur to you that it ought to be told?

A. No, it just escaped my memory, that was all.

Q. Do you say to the court now, that on yesterday, at the time that you were asked to detail the conversations and transactions that occurred in your office on that Friday, the 20th, that it didn't occur to you that this order had been made as you say now, at the instance of Mr. Sachs, and that the interlineation was made upon the record to conform to it in order to show that it was transacted during the existence of the term? You say that didn't occur to you?

A. I say it escaped my memory yesterday, or I would have told about it.

Q. You knew all the time Mr. Kelso that that was a wrongful act, and a forgery of the record, didn't you?

A. I thought it was.

Q. You were a party to it?

A. Yes sir, I was a party to it.

Q. And yet you had forgotten that important fact?

Mr. Kealing: I submit, your Honor, that he has already said that he had forgotten it.

The court: Yes, he has answered that.

Q. How do you change your statement of yesterday when you said that Judge Utz advised you in the court house, while in the court house, to withdraw your attorneyship of record for these parties?

A. Yes, I change that because I think I was mistaken about it.

Q. And you now think it was at your office?

A. Yes sir.

Q. What time of day do you think that occurred?

A. In the morning, forenoon some time.

Q. At what hour?

A. I couldn't say exactly what hour it was. Probably along about ten o'clock.

Q. Friday when these gentlemen came over from Louisville Mr. Kelso, is it not a fact, and hasn't it been so stated by you, that when they came over they went to Judge Utz's office and found you there?

A. Friday, yes sir.

Q. When they first came over?

A. Friday, no. Not Friday. Thursday is when they met me at Judge Utz's office. If I said they met me at Judge Utz's office Friday I made a mistake; they met me at my office.

Q. Judge Utz met you in your office?

A. He met me Thursday in my office.

Q. Didn't Judge Utz make an agreement with you on Thursday afternoon to see you at 8 o'clock Friday morning, and say that these gentlemen would come at nine?

A. No, he made an engagement with me Wednesday afternoon to meet me at 8 o'clock Thursday morning.

Q. And these gentlemen were to come over there?

A. Yes sir.

Q. Now where was it you say that Mr. Watts and Mr. Sachs first met you and Judge Utz on Friday morning?

A. At my office.

Q. How long did you remain there?

A. Oh we remained there some time, until the order—I think Mr. Sachs and I remained there all morning, until noon, when we called in the Deputy Sheriff and sent the Deputy Sheriff with the notices to serve on Mr. Moser, the President of the New Albany Trust Company, and Mr. Watts who was around at Goodbug's.

Q. This is Friday we are talking about.

A. I am talking about Friday also.

Q. You remained there all the forenoon?

A. I think so.

Q. And they remained in New Albany all day Friday?

A. Yes sir.

Q. Mr. Kelso when did you first meet Mr. Sachs and become acquainted with him?

A. Why, Wednesday the 18th of February.

Q. You had never met him or become acquainted with him before then?

A. Never had met him or seen him before, that I know of.

Q. I believe you said it was five o'clock on Wednesday the first meeting?

A. Yes.

Q. At your office?

A. Yes.

Q. You met then Mr. Sachs and Mr. Watts?

A. Yes sir.

Q. At that time do you say that you talked about the question of the jurisdiction of the Floyd Circuit Court?

A. Yes sir.

Q. And finally that you told them that you would agree to accept the receivership provided they agreed to indemnify you for costs and expenses?

A. Yes, sir.

Q. And there it was that you say that they did agree?

A. Yes, sir.

Q. Did you hear Judge Utz's evidence here yesterday?

A. Partially, yes.

Q. Did you hear Judge Utz say anything to the effect that he had not discussed the appointment of a receiver, or the removal of the trust company until the parties came over to see him, Messrs. Watts and Sachs on Wednesday, and that he didn't determine upon the removal until Thursday morning?

A. I heard him say that, yes sir.

Q. Well is that in accordance with your understanding of the facts?

A. No; well, I didn't understand it that way, any how.

The Court: That is not a proper question.

Q. You heard him say that?

A. I heard him say it, yes sir.

Q. Did you have any agreement with him to accept the receivership before this,—with Judge Utz?

A. No.

Q. Had there been anything said or done in regard to the appointment of a receiver before that time?

A. Except what these two gentlemen talked to me about on Wednesday afternoon.

Q. Then you did not know it was in the mind of Judge Utz to remove the New Albany Trust Company and to appoint you?

A. Oh yes, these two gentlemen said that the trust company was going to resign.

Q. Said that the trust company was going to resign?

A. And that Mr. Henry Jewett had agreed to hold the property until, the court could appoint a successor and send out there and take possession before it was turned over to the United States Court.

Q. Judge Utz had determined that he was going to appoint you as a successor, is that true?

A. No, I didn't say that.

Q. Is that true?

A. No.

Q. Then you don't know that Judge Utz had determined to appoint you at all?

A. No.

Q. Who suggested you?

A. Mr. Watts and Mr. Sachs, and discussed the matter as to whether I would take it or not, and I said I would.

Q. And it was on their suggestion that you agreed to take it.

A. Oh no; the court came around the next morning and I agreed to take it.

Q. That was the first time the court talked to you in regard to it?

A. These gentlemen were looking for somebody; they wanted to get somebody that wouldn't give way; like Mr. Watts and Mr. Jewett had given way up here in the court; that is what they said about it.

By the Court:

Q. They wanted somebody to make a fight?

A. Yes sir that is what they wanted to do.

Q. Against the authority of this court?

A. Yes sir.

Q. And you said you had no intimation from Judge Utz that he would appoint you, or that he would expect to appoint you before that time?

A. None except by the telephone call from him.

Q. That was making the appointment to see you the next morning?

A. Yes sir.

By Mr. Smith:

Q. Mr. Kelso, is it not a fact that at the time Messrs. Watts and Sachs came to your office that they told you that Judge Utz wanted to see all of the attorneys the next morning and had asked them to give you the right information?

A. No sir.

Q. It is not true?

A. No sir, it is not true.

Q. Isn't it true that you said at that time that you could not give the information to Mr. Stotsenberg because you were not on speaking terms with him?

A. No sir, that is not true.

Q. Is it not true that when the gentlemen came up in your office that they didn't sit down at all and that Mr. Sachs delivered the message, and then they left?

A. Oh no, they stayed there some time.

Q. Were you on speaking terms with Mr. Stotsenberg at that time?

A. Oh yes, yes sir

Q. Perfectly friendly with him?

A. Yes sir.

Q. And didn't tell these gentlemen that you were not?

A. No sir. Mr. Stotsenberg is looking after my business at home now.

Q. What time did these gentlemen consume in your office there on that Wednesday?

A. Why I think they stayed there probably half an hour. I caught the six o'clock car up home.

Q. Did they sit down?

A. Yes sir.

Q. Have you more than one office there?

A. I have three rooms.

Q. What office were they in?

A. In the rear one.

Q. Is that the way the stairway goes up?

A. The stairway goes up and faces the south, runs to the south, and they were in the south room of the building.

Q. You say Mr. Watts didn't do any talking up there?

A. Not much of it; no Mr. Sachs did most of it.

Q. And you relied upon Mr. Sachs although you had not known him, didn't know of his financial condition, and knew nothing of him whatever, a total stranger?

A. I knew the Sachs brothers reputation in Louisville as lawyers. That is all I knew about it. But I knew Mr. Watts; had known Mr. Watts for some time.

Q. Now did you telephone to them any more that Thursday, to Louisville to these gentlemen?

A. Thursday?

Q. Yes.

A. I only telephoned once to them on Thursday.

Q. When was that?

A. That was in the afternoon.

Q. Did you receive a telephone before these gentlemen reached your office, from any one saying that they were coming? On Wednesday I am talking about now?

A. Yes.

Q. Who was it from?

A. Henry Jewett.

Q. What did he say to you?

A. He said some gentlemen were coming around to see me.

Q. That you say was about five o'clock, and they stayed about a half hour?

A. Yes sir.

Q. Now on Thursday what time did they come to New Albany?

A. I should say it was along about half past nine o'clock.

Q. You were in consultation at that time with Judge Utz at his office were you not? according to appointment made on the previous afternoon?

A. I was there according to the agreement to meet these gentlemen there at nine o'clock the next morning.

Q. You had fully arranged between Judge Utz and yourself about your accepting the receivership?

A. Oh yes, I had agreed to accept it.

Q. They came over about ten?

A. About half-past nine; they made an appointment to meet me and Mr. Henry Jewett and the Judge there at nine o'clock.

Q. Who was with them when they came in there?

A. Mr. Watts and Mr. Sachs were by themselves together.

Q. Mr. Jewett didn't come in?

A. He didn't come in, no, not till he was telephoned for.

Q. I believe you say the conversation there was the general run of conversation, was still the jurisdiction of the Floyd Circuit Court?

A. As to how the court could retain the property.

Q. Then you say the next conversation turned upon the question of your executing a bond and of your accepting the trust and of your resigning your attorneyship in order to do so? Is that true?

A. No; no, the next thing that occurred was to telephone to Mr. Henry Jewett to come over.

Q. Now tell us the next that occurred?

A. He came over and said that he was busy at his office and that the colonel would come there and represent him. The colonel came over and then stated to the court that he would turn the property over. Mr. Sachs interrupted, and asked him if he had turned the property over, and Colonel Jewett said, "I don't want to be insulted," or interrupted—I

couldn't catch which word he used there; and he finally went away; and then these gentlemen, Mr. Sachs and Mr. Watts and Judge Utz seemed disappointed about it.

Q. Let me ask you at that particular juncture there if Mr. Sachs didn't then turn to you just as Colonel Jewett went out and ask you if you could not ascertain whether or not the property had been turned over?

A. Yes sir.

Q. And didn't you take up the phone to find out?

A. Yes I telephoned over to the trust company and asked Mr. Sauer if he had; he said he had.

Q. And didn't you announce the fact to the gentlemen assembled there?

A. I did indeed, yes sir.

Q. That the property had been turned over.

A. Yes sir.

Q. And Judge Utz was present at the time you made that announcement to them?

A. He was there.

Q. Now didn't Mr. Sachs then say to you and to the gentlemen assembled that that ends the matter; if the property has been turned over under the agreement and is now in the possession of the United States Court, that that ends the matter right there?

A. No he did not say that.

Q. Did he say that in substance?

A. No.

Q. What did he say?

A. He said that the Jewetts had went back on them; that is what he said.

Q. Well go on and tell all the matter?

A. That is all he said at that time.

Q. Now you haven't got down to the execution of the bond yet, or the directions about your acceptance?

A. Then these two gentlemen left and went to Louisville.

By the Court:

Q. What two gentlemen?

A. Mr. Watts and Mr. Sachs.

Q. Who was it said that Jewetts had deserted them?

A. Mr. Sachs. And they went to Louisville. I thought the matter was ended there. After dinner Judge Utz came to my office, and asked me to telephone Mr. Watts and Mr. Sachs to come back the next morning.

By Mr. Smith:

Q. That would be Friday?

A. And I telephoned them to come back and meet me at my office. Then the bond question came up after they had

agreed to the appointment of myself, the bond question was then discussed after that; we went around to Judge Utz office after dinner, and the bond question came up; they insisted that the bond ought to be small, and Judge Utz insisted it ought to be for $30,000.

Q. Now you say that the bond question was raised upon Friday for the first time?

A. After dinner, around at Judge Utz's office the amount of it.

Q. And you say now, instead of the question of your withdrawing was raised on Friday, but you said yesterday that that question was discussed late Thursday?

A. No I said that question was discussed on Friday, me resigning.

Q. What time Friday?

A. In the morning.

Q. That was on Friday that that was discussed, but not at the court house; at your office?

A. At my office on Friday.

Q. Was that before you came over to the court house on Friday, or had you been to the court house and returned to your office?

A. Oh no. I hadn't been to the court house.

Q. Had these gentlemen been to the court house before that discussion took place?

A. Not to my knowledge on Friday.

Q. Then after you had passed beyond what you yourself stated occurred at the court house, how did the conversation further progress, if there was any further conversation in the morning?

A. On Friday I am talking about.

Q. I am talking about the conversation on Friday?

A. I wasn't talking about the conversation on Friday at the court house about the bond question; we talked about that after dinner, and it was concluded to give the bond.

Q. What did you do Friday morning while the gentlemen were over there?

A. We discussed the law, and Mr. Sachs and I drew up this notice, and petitioned for the removal of the New Albany Trust Company.

By Mr. Kealing:

Q. At your office?

A. At my office.

By Mr. Smith:

Q. That was a typewritten petition?

A. Yes sir.

Q. Didn't you draw that petition?

A. I dictated it with the assistance of Mr. Watts who made some suggestions about it.

Q. Mr. Watts, you say?

A. Mr. Sachs I mean.

Q. Was Mr. Watts there?

A. He was there about noon, heard the paper read, knew we were getting up the papers to serve on him, and made arrangements to be at Goodbug's where the sheriff went and served it on him.

Q. Mr. Kelso, is it not true that Mr. Sachs was in a different room from where you were dictating that paper at the time you were dictating it, and didn't he come over to your office upon an invitation from you to go by your office until you fixed up some papers and then you and he would go to lunch together?

A. No.

Q. You did go to lunch from there?

A. Yes we went around and took lunch with Mr. Watts

Q. At the time of the drafting of the paper is it not true that you were in a different room from Mr. Sachs at that time?

A. No, I called the stenographer back in the room where we both were.

Q. Is it not a fact that you drew one paper, and afterwards tore it up, and afterwards presented a second paper to him

A. No.

Q. You didn't first tear up one that you had prepared?

A. No I think not.

Q. Is it not a fact that at that time that I have indicated when you came back to Mr. Sachs you said, as I am going to be appointed receiver in this matter it would hardly look right for my name to appear on record, and I want you to appear in this particular matter just by signing your name to the petition that the court had directed to be drawn.

A. No sir.

Q. Hadn't Judge Utz instructed you to bring the matter to his notice by a statement or petition showing the fact and the conduct of the New Albany Trust Company and to ask for their removal and punishment?

A. I think he had told us to do that, told Mr. Sachs and I

Q. Did he tell Mr. Sachs, or tell you?

A. Yes he told Mr. Sachs; Mr. Sachs was the leading spirit in the case.

Q. Altogether?

A. No not altogether; he was one; I wouldn't have gone into it if it wasn't for these gentlemen.

Q. Did Mr. Sachs have anything to do with the case at all until Mr. Watts and Mr. Jewett got into trouble with the Floyd circuit court?

A. Not at all; I think not.

Q. That was his first entry into the case?

A. Yes sir.

Q. You were in the case before that were you not?

A. Yes, I was in the case representing some creditors.

Q. You say you wouldn't have gotten into this, if these men hadn't come to your office to see you?

A. I mean Mr. Watts and Mr. Sachs and Judge Utz; if they hadn't; I had no interest in the thing.

By the Court:

Q. Would you have accepted the position if you had known it was to interfere with the jurisdiction and lawful possession of the receiver of the United States court?

A. I would not; no. The largest claim I had was only $3,000.

By Mr. Smith:

Q. Mr. Kelso, what induced you to take the risk of standing in contempt of this honorable court and render yourself liable to be punished?

A. Well I will tell you what induced me to do it, was particularly the request of Judge Utz, and then I felt if we would succeed in establishing the jurisdiction, I felt that we might get a pretty fair allowance from the Court.

Q. Then it was not entirely a friendly feeling toward these gentlemen, one of whom was a stranger to you, but it was from a money consideration?

A. It was more from the request of Judge Utz; I expected, of course, to be compensated for my services; there is no question about that.

Q. You say this bond arrangement took place on the afternoon of Friday, I believe?

A. Yes sir.

Q. You and Mr. Sachs and Mr. Watts, and Judge Utz and Mr. Joe Sachs were there at that time, were they not?

A. Joe Sachs came in there in the afternoon some time.

Q. He was there at the time you say the bond was fixed, was he not?

A. I don't know positively, but he was there some time during the afternoon; he may have been there at the time the bond was fixed; I wouldn't say that he was or was not.

Q. Now is it not a fact Mr. Kelso that a little between three and four o'clock that Mr. Joe Sachs invited you gentlemen to go out for refreshments and that you declined to accept because you said that Judge Utz had directed you to draft some papers?

A. I know I didn't go with them; I know he invited some gentlemen to go out and take a drink.

Q. Is it not a fact that at that time Judge Utz and Mr. Watts accepted the invitation?

A. I think they went away together.

Q. Is it not also a fact that Dave Sachs said that he wasn't feeling well and intended to wait for them in the court room until you gentlemen returned?

A. I don't think he said that; he went with me to my office.

Q. You say he stayed with you?

A. Yes.

Q. Stayed with you how late?

A. Stayed with me for some time until I prepared the entries I was working on. He assisted me in it. For instance the paper here in relation to the appearance of the Inland Steel Company by Mr. Hester was prepared in my office; I prepared an order that I thought was sufficient and Mr. Sachs said it wasn't strong enough; he interlined it so as to make it appear that Mr. Hester had entered a full appearance in the action pending in the Floyd circuit court.

Q. What time was that in the day, have you any idea?

A. I think that was in the morning some time.

Q. In the morning? We are talking about afternoon transactions now?

A. It was in the morning I was talking about.

Q. We were talking about the time Joe Sachs extended the invitation to go and get a drink?

A. Oh I beg your pardon; he went over to my office.

Q. Let's see if I can find something else that occurred on that afternoon?

A. He was sitting there and taking particular note of what I said to the stenographer and making suggestions.

Q. About what?

A. About the entries.

Q. Can you tell anything he said or remember anything about it? The court would like to hear what he said and did?

A. Why I remember we investigated the statute; he wanted to know what form of the statute we would follow, and I went down and sat in a rocking chair along side of him and looked up the statute relating to the recovery of this property; got down the statute relating to receiverships, and discussed the form of the writ, and all the papers were prepared there while Mr. Sachs and I were present. We then went out after we finished that; Judge Utz came to my office and looked them over and took the papers to the clerk's office, and Mr. Utz and I went to Clare's saloon on Pearl street.

Q. Is it not a fact that you didn't see Mr. Sachs after you left the court house that afternoon in order to draw up those orders until between six and seven o'clock, and about that time you passed along by the corner where Mr. Watts and Mr.

Sachs and Mr. Zier were standing talking, and you said you were on your way home?

A. No sir.

Q. Didn't you pass them there?

A. Who.

Q. Mr. Watts and Mr. Sachs?

A. On Friday we went from the corner of Pearl and Spring streets up to Seventh; Mr. Watts and Sachs and myself went from the corner up to Seventh street.

Q. I am not asking you about where you went. I am asking you isn't it true that you came up on these gentlemen at that place and that you hadn't seen these gentlemen from the time you left them at the court house when you went out to prepare the petition as directed by Judge Utz—that you hadn't seen them from that time until you met them there?

A. No, that is not true.

Q. And that was nearly half past six?

A. No, that is not true.

Q. They went home about what time?

A. It was after six o'clock; it must have been along about seven o'clock.

Q. What time did you make the demand upon Mr. Connor for this property?

A. I think it was about seven o'clock.

Q. What time was the property actually taken from the custody of Mr. Connor?

A. Along between eight and nine o'clock. I can't tell just when.

Q. Then Mr. Sachs and Mr. Watts were not in the city as far as you know at that time?

A. Not when the sheriff took the property. No sir.

Q. No, when you made the demand?

A. Well I don't believe they had hardly gotten out of the city; they may have been up at the depot at Vincennes street, but I don't believe they were out of the city.

Q. At least they were not with you?

A. They were not with me.

Q. They came back you say Saturday?

A. Yes sir.

Q. What occurred?

A. Well they came back to get up some proceedings by way of contempt against Mr. Connor and Mr. Hester, and along with Mr. Watts contempt proceedings also.

Q. Is it not a fact that they came back to respite the rule against Watts?

A. There was not any rule against Sachs.

Q. But was not Sachs acting as attorney for Watts and did you not know that that was the fact at the time and he

made a request of Judge Utz at the time to continue the rule?

A. Mr. Sachs was acting as my attorney.

Q. I asked you if you do not know it is a fact that he came back as attorney for Watts?

A. No sir.

Q. And that he himself made the motion before Judge Utz to continue that rule?

A. No sir I do not know that he did.

Q. He came back on Saturday and Watts did get the rule continued on that day until Wednesday?

A. Yes sir.

Q. Where were you and Sachs in the mean time while Watts was getting the rule continued?

A. We were first over to the Deputy U. S. clerk's office, looking for this absent order and then we went out and went through the Zier plant, that is the down stairs part of it.

Q. How far is the Zier plant located from Judge Utz's court room?

A. About four squares.

Q. What time of day was it you say Mr. Watts went with you down there?

A. I didn't say Watts.

Q. Sachs?

A. I judge along about three o'clock in the afternoon.

Q. How long were you away from the court house or away from Mr. Watts before your return?

A. Well, we went down and went through this plant, that is the downstairs part of it and looked around over it. We were gone twenty five or thirty minutes.

Q. Who was with you?

A. Mr. Sachs and I went together and the watchman was there, Mr. Smithwick, when we got there.

Q. Mr. Smithwick?

A. No sir, Mr. Ruoff, the day watchman was there instead of Mr. Smithwick.

Q. Where did you go when you returned from that inspection?

A. We went to Mat Claire's saloon and we sat down there.

Q. Did you go back to the court house after that?

A. I do not remember whether we did or not. I don't believe we did.

Q. Where did you get with Mr. Watts?

A. Mat Claire's saloon.

Q. Did they leave from there for home?

A. Yes sir.

Q. What time?

A. I think along about five o'clock.

Q. Then you had another meeting on Sunday?

A. Yes sir.

Q. You were cited on Saturday night about 9 o'clock?

A. Yes sir.

Q. You telephoned Mr. Sachs?

A. Yes sir.

Q. Did you tell Mr. Sachs anything about his being included in that citation?

A. Yes sir.

Q. You are quite sure of that?

A. I am certain about it.

Q. You asked Mr. Sachs to come over next morning?

A. Not then.

Q. When was the arrangement made for him to come over Sunday morning.

A. After I was called down to Judge Utz's office.

Q. That was Saturday night?

A. The same night.

Q. Then you called him again?

A. I did not call him. I sent word out by a young man there to telephone over. I think it from Kepley's stable.

Q. Did you send to Watts and Sachs?

A. I think both.

Q. You requested them to come over, at any fixed time?

A. Ten o'clock.

Q. That was the time you went to the court house and then adjourned to your office.

A. Yes sir.

Q. Then the matter was discussed about the preparation of the response to these citations?

A. To the rules.

Q. Was that the only discussion that occurred there that day?

A. I think so.

Q. Then on Monday you came over to Mr. Sachs' office by appointment.

A. Yes sir.

Q. You got there before Judge Utz, did you not?

A. Yes sir.

Q. He did not come there until afternoon?

A. He did not get there until after dinner?

Q. You got there between ten and eleven o'clock in the morning?

A. Yes sir I think so.

Q. What did you talk about in the forenoon, anything except a general discussion about the jurisdiction of the court and the nature of the responses to the rule.

A. I took a copy of the order I had prepared from the clerk's office, that was discussed and the affidavit upon which the rule was based was discussed. I had that with me.

Q. Did not Mr. Watts tell you to bring that copy over with you?

A. No sir, Mr. Sachs did.

Q. He told you it would be necessary for you to wait until you could get a copy and bring it over before he could tell you anything about the nature of your responses.

A. Yes sir.

Q. When you showed it to me, did he not tell you you had no response to make at all?

A. No sir.

Q. What did he say?

A. He did not say much of anything. I tried to get him to make up my response and he concluded that he could not do it, that he could not act as my attorney up here, that if he came up here, he would be put on the witness stand and have to say something against his friend Watts. He advised me to come to Indianapolis and get an attorney and finally I told him I was going to get one.

Q. Did you not say awhile ago in your examination that about five o'clock Hester told you he had the order and you phoned the contents of it to Sachs and he said you are done for.

A. Yes sir I said that.

Q. Sachs then over the telephone notified you of the fact that if that order was entered it was a settlement of the question and you were done for?

A. Yes sir he said that over the phone.

Q. That was on Sunday night.

A. Yes sir.

Q. Before the Monday morning visit?

A. Yes sir.

Q. When you got over in the office and he read the order, did he not tell you the same in effect?

A. No sir.

Q. Didn't he tell you the best thing you could do under the circumstances was to go to Indianapolis and see if you could not make a settlement of the matter with the court?

A. No sir, he said I had better get a lawyer at Indianapolis, and advised me not to get Mr. Newberger, because he did not think Mr. Newberger was the right kind of a man for this kind of a case.

Q. By the Court: Did he say what the right kind of man for this case was?

A. No, sir, he did not. What he said was that Mr. Newberger was not the right kind of a man.

Q. By Mr. Smith: Was not Morris Sachs in Mr. Sachs office at the time this order was submitted by you to Dave Sachs?

A. In the morning he was.

Q. I mean at the time the order was read?

A. I think he was there.

Q. What did Morris Sachs say about it?

A. He said we thought we had acted the fool about the matter, but he said notwithstanding that he felt that the circuit court had jurisdiction.

Q. That was simply going back to the original question of jurisdiction.

A. Yes sir.

Q. Did he not tell you that was no response to a matter like this?

A. No sir he did not say that.

Q. Or in substance anything like that?

A. Not that I remember. He may have said it.

Q. He was in there and did discuss it?

A. Yes sir and there was a good deal of talk back and forth.

Q. How did that question of costs or any contemplated costs arise in that meeting?

A. That came up late in the afternoon, when I asked them what they were going to do about the costs.

Q. Did you not at that meeting and while Mr. Watts was absent ask Joe Sachs if he thought Watts ought not to stand for it or something of that sort?

A. No sir.

Q. Did you not address your remarks in regard to that matter to Joe Sachs entirely?

A. No sir.

Q. Did you include anybody that you thought ought to be made responsible for the costs or liable therefor except Mr. Watts?

A. Yes sir.

Q. You mentioned Mr. Sachs' name?

A. Yes sir.

Q. You called both of them by name at the time?

A. I probably used the word "they" had agreed. I may not have said "Watts and Sachs."

Q. Did not Joe Sachs say to you at that time that if you were going to discuss the question as to Watts you had better have Watts present and did he not say that he would go in the other room and phone him?

A. No.

Q. Nothing of that kind occured?

A. I heard nothing of that sort.

Q. You say that Watts did come there in a few minutes thereafter?

A. I said Mr. Watts came there. I did not say he came a few minutes after, any such statement as you have just made.

Q. He came over in the afternoon?

A. He came over in the morning and afternoon both.

Q. But you and Dave Sachs and Morris Sachs were in the office there sometime in the afternoon before Mr. Watts did come in? And Joe Sachs?

A. I think we were yes sir.

Q. Did not Judge Utz in that conversation when you were talking about the question of cost of defending these rules say that it would cost several thousand dollars and did not Judge Utz say he had money in court that could be used on the matter?

By Mr. Kealing: Where was that?

Q. At that same Monday interview.

A. No sir he did not say that.

Q. What time was it on Monday that Judge Utz came over?

A. I do not know what time he came over. He was there at the office after D. A. Sachs and I returned from lunch, sitting there by himself.

Q. How long did you gentlemen remain there? In the afternoon?

A. I think along until half past four o'clock.

Q. You know John Watts?

A. Yes sir.

Q. He was there in the morning of that Monday's interview, was he not?

A. He was.

Q. Did not John Watts early in that interview in the morning say to you "Mr. Kelso, I want to know if you know of any act or anything done on the part of my brother W. W. Watts, that in the slightest way indicated after his return from Indianapolis that he desired the state court to try to retain the possession of this property or in any way further interfere with the jurisdiction of the Federal Court?

A. Yes sir he said that to me.

Q. Did you not tell him you did not know of any act or transaction at all?

A. No sir.

Q. Or to that effect?

A. No sir I told him just what his brother had done.

Q. Didn't you tell him that you did not know anything he had done to the effect and that you were willing to give an affidavit to that?

A. No sir.

Q. Was not that matter mentioned again in the afternoon after Judge Utz was present? And was not the same question put to Judge Utz in your presence by John Watts?

A. Something of that kind was said, yes.

Q. And did not Judge Utz make the same statement to John Watts in regard to W.W.Watts, as you had made, that is that he did not know anything at all that would indicate after the return from Indianapolis that W. W. Watts was trying to get the state court to retain possession or advising the retention of possession by the state court or the taking of the property from the U. S. court receiver?

A. I never said any such thing.

Q. Did Judge Utz say it?

A. No sir.

Q. What did you say?

A. I told him about what his brother had done, that his brother was all the time protesting about it and saying that he desired to turn the property over to the United States Court according to his promise, but that notwithstanding those things, he was advising about the law and giving his opinion that the law was against the contention of the U. S. Court. I told his brother that.

Q. Is that all you told him?

A. Practically so yes.

Q. Was it not immediately after this conference in the afternoon that John Watts asked that his brother withdraw from the conference?

Q. I do not know whether that occurred in the afternoon or morning about the withdrawal from the conference.

Q. Whether it occured in the afternoon or morning, did it not occur at one time or the other just after John Watts had asked that question either of you or Judge Utz?

H. I cannot say in regard to that, but I know that he did suggest that his brother retire from the meeting.

Q. There is one mat'er that I neglected to ask you in regard to that I want to understand more fully. You say you employed Dave Sachs to represent your trust, that is your receivership?

A. Yes sir, to represent me as receiver.

Q. As receiver of that estate?

A. Yes sir.

Q. When was that employment made?

A. Friday.

Q Where?

A At my office

Q. That was the first suggestion of it?

A. Yes sir.

Q. Who was present?

A. Judge Utz, Mr. Sachs and myself.

Q. Where was Mr. Watts?

A. He was out somewhere, I do not know where.

Q. I will ask you if it is not a fact that you on Friday said to Mr. Sachs I would like to employ you to represent my trust, and that Mr. Sachs said to, "I have got all the business I can attend to in Louisville and I do not desire to appear here. I simply come over here to represent my friend in this matter and they have a good bar here and if you cannot get a lawyer that suits you here you can go to Indianapolis, there are men of ability there." And if you did not remark "I don't know whether I need a lawyer or not. I am a sort of lawyer myself and I reckon I can attend to this without any lawyer anyhow."

A. No sir. I made no statement, but on the contrary I said to Mr. Sachs that Judge Utz and I had discussed the question of whether we would come up here and employ Charles Smith and we had concluded to employ Mr. Sachs as he had been through several bankruptcies and he said he did not want to force himself in, but if I desired he would accept the employment and stay with me to the end.

Q. What retainer did you pay him?

A. I did not pay him any.

Q. You gave him no indemnity for fees in any way?

A. No sir, I understood that Mr. Sachs was rather representing Mr. Watts in trying to keep the possession of this property in the Floyd Circuit Court

Q. We do not care for your understanding except you give us the facts on which you base it.

A. I cannot give you any other facts that I have stated.

Q. You had paid him no fee?

A. None at all.

Q. You had executed no obligation to him promising any fee?

A. No sir.

The Court: That is repetition, you are consuming too much time in that way.

By Mr. Fairleigh:

Q. After Mr. Watts' return from the meeting before this court on the 16th and 17th of February, did you hear him say or do anything or advise anything which would indicate that he did not intend to do everything to have the property turned over to the New Albany Trust Co. to Mr. Connor the receiver of this court?

A. All I can say is this: that I heard Mr. Watts declare that he intended to carry out the promise he had made to the U. S. Court; but I heard Mr. Watts give expressions of his

opinion as to the law which was contrary to the law as laid down by this court quite frequently.

Q. But he always said and his acts always indicated that he really intended that the New Albany Trust Company so sar as he was concerned, as its attorney or otherwise, should turn over that property to Mr. Connor receiver.

A. I do not know what his acts indicated. I am not ready to give any opinion on that proposition. But Mr. Watts did declare that he intended to turn the property over, but he would give opinions contrary as to the law all the time.

Q. Do you know of any acts he did other than giving his opinion of what the law was touching the retaking of the property by you as receiver from Mr. Connor as receiver?

A. No sir.

Q. He did not do anything at all, except simply to express his opinion of what the law was?

A. That is all I know of except that he agreed to pay my expenses at one time.

Q. What do you mean by that?

A. I mean that he said if I was at any expense in this matter that he and Mr. Sachs would see that it was paid.

Q. Where was that?

A. At my office.

Q. What did that involve?

A. I suppose it involved whatever expense I might be put to if I was guilty of contempt of this court.

Q. What were you expecting to do at that time?

A. To contest the jurisdiction of this court?

Q. How?

A. I don't know how.

Q. Was it in his mind that you should use any force of any kind?

A. Not that I know of.

Q. Was it in your mind?

A. No, sir.

Q. That was not in contemplation of the parties at all at that time?

A. Not to my knowledge?

Q. You had no suspicion, no sort of notion that that would occur at that time?

A. No sir, I thought there would be lawsuits or something of that kind.

Q. Exactly, but was it not suggested that the proper way was to intervene in this case and have the question decided?

A. I don't think anything of that kind was suggested.

Q. Was not that the idea?

A. I don't know what the idea was, but it was not suggested.

Q. But there was no intention by anybody that you should take it by force.

By the Court:

Q. When was the determination arrived at to take it by force?

A. After the New Albany Trust Company had turned it over to the receiver. The understanding was that the New Albany Trust Co. was to hold the property until I could be appointed receiver without any trouble before this court got possession.

Q. Did Mr. Watts know that.

A. I do not know whether he did or not.

Q. Was he present when that was talked about?

A. I don't think he was.

Q. By Mr. LaFollette: You stated awhile ago that after you were requested to become receiver you suggested as you appeared of record as an attorney for some of the creditors of M. Zier and Company that you could not while such attorney be the receiver, and that it was then suggested to you that you withdraw from that and that such an entry was made and attached to the entry that had been made bearing date the 14th, I think, of February?

A. Yes sir.

Q. And that that was entered as of that date?

A. Yes sir.

Q. As a matter of fact it was not done on that date?

A. No sir it was not.

Q. Who is your clerk?

A. Charles B. Scott.

Q. Do you know the signature of your clerk?

A. I do.

Q. You may examine that certified copy and the signature thereto and state whether or not that is the signature of the clerk of the Floyd Circuit Court?

A. No sir, this is not Mr. Scott's signature: this must be the signature of one of the deputies.

Q. And examine and from your knowledge state whose signature it is.

A. I should say that Edward Martin put that signature there.

By the Court:

Q. Is he a deputy clerk?

A. Yes sir.

Q. By Mr. LaFollette: And from the signature thereto you would say that this certificate of the clerk and the signature as it appears is official?

A. I think so.

Q. By the Court: Of the proceedings of Februray 14th?

A. I think this includes some other proceedings prior to that time.

Q. But including the proceedings of February 14th?

A. Yes sir, it includes the proceedings of February 14.

By Mr. Fairleigh: Is there any doubt of that?

The Court: There are two different records here. It shows that the records of the Floyd Circuit Court were mutilated. The clerk of the Floyd Circuit Court has made two certificates, one to one state of facts and another to another. One of these contains considerably more than the other. The closing paragraph of this record appears as follows:—"And Jacob Hoerter and George H. Hester, such attorneys, being now present in court and Hester having been heard in opposition to said petition and having notice of the entry of this order, it is now ordered that no other or further notice be given the said Inland Steel Company, the Dey Time Register Co. petitioners in said bankruptcy proceedings." Now that is certified as a true and complete copy of the proceedings.

Mr. Miller: We have a certified copy of that record with the certificate just as you have there, dated the 14th.

The Court: Then in this other certificate immediately following is this,"And comes now C. D. Kelso and asks leave to withdraw as attorney of record for the following-named parties, United Gas and Electric Co., United States Tube Co., the Indiana Water Company and Simon David; and the court now permits the said C. D. Kelso to withdraw therefrom." That is the end of this record and then follows the certificate.

By the Court:

Q. Is that the part that was put into that entry as of the date at Sachs' suggestion because he wanted a record?

A. Yes sir.

Q. And that is the point you referred to awhile ago that was made on the 20th and added to the record as it had been made up formerly and caused to appear as part of the record of the 14th and while the court was still in session?

A. Yes sir.

Q. What is the date of that?

A. The 14th.

Q. What is the date of the second?

Mr. LaFollette: The date of the certificate is the 20th of February, but it purports to be a record of the 14th of February.

Mr. Kealing: One certificate is dated the 14th and the other the 20th.

Mr. LaFollette: And this record that has not the addenda was filed in the U. S. District Court on the 16th of February.

The Court: And the other was filed in this court on the 21st day of February.

Q. At the time that these matters were being discussed in your office along about the 19th and 20th of February, there was something said about your being invited to go down to some cafe or saloon on the street. Did you go with the company?

A. No sir, not then.

Q. You did not go?

A. No sir.

Q. Did you go to that place afterwards?

A. Yes sir.

Q. Whom did you find there when you did go of these parties if you did go if any of them?

A. I think I found Mr. Watts there and Joe Sachs there —I went with D. A. Sachs and I think Judge Utz was there.

Q. Did you have any talk there in the room where you went about these proceedings?

A. Oh I think the law was discussed but most of the time was spent in lstening to some stories being told there.

Q. Was there anything additional there said in regard by any one in regard to the proceedings that had been had in the court before Judge Utz?

A. The reason why the matters were delayed was because we were waiting on the Trust Co. to make up its report. The Trust Co. had agreed to make up a report just as soon as it could and it finally brought in a little piece of paper about that long showing the trust estate was indebted to it in about the sum of $23.00.

Q. Was that accepted as the report or refused by Judge Utz?

A. It was not accepted and they promised afterwards to make a detailed report.

Q. Was anything said to you during the proceedings by Henry Jewett the vice-president of the Trust Company in regard to your proceedings?

A. Yes sir.

Q. What did he say?

A. Saturday morning at the postoffice he met me and said we have taken up too much time discussing the law, that we ought to have sent the sheriff and taken the property before it was delivered.

Q. What if anything did Charles L. Jewett say to you about it?

A. We were sitting in Mat Claire's saloon and he came up out in the little recess in the back part of it and said that he was surprised that Judge Utz did not catch his eye, that he wanted him to send the sheriff out there and get the property before it was delivered.

Q. What did you do if anything, in the way of making an affiidavit against the receiver appointed by the U. S. Court and at whose direction did you do that if any one?

A. Judge Utz. I made the affidavit against Mr. Connor at the request of Judge Utz.

Q. Did D. A. Sachs say anything to you about that?

A. He said it ought to be done.

Q. Then you made the affidavit?

A. Yes sir.

Q. Was Mr. Watts present at that time?

A. I do not know. I do not believe he was. Mr. Watts did not spend a great deal of time with us.

Q. Was there anything said to you about including in that affidavit Mr. George Hester who had appeared as attorney for one or more of the parties in the bankruptcy proceedings?

A. And I declined to make him in it. I refused to make the affidavit against him.

Was that conversation had at the same time when Mr. Sachs was present?

A. Yes sir, I think so.

Q. What, if anything, did Mr. Sachs say about that?

A. He said we ought to get Hester.

Henry E. Jewett, recalled, and examined by Mr. La-Follette, testified as follows:

Q. State whether or not the New Albany Trust Co. as receiver for M. Zier & Co. had in its possession all of the property of M. Zier and Company?

A. So far as the Trust Co. knew.

Q. Had you made an inventory of the property?

A. Yes sir.

Q. And from whom did you get the information as to its being the entire property of M. Zier and Company?

A. I did not assist in making the inventory, it was made by two appraisers and Mr. Urey, the secretary. I was informed that the secretary went over the plant and furnished the information.

Q. There was no other property came to your notice or knowledge after that?

A. I do not remember any.

Cross-examined by Mr. Miller:

Q. You were here on the 16th and 17th with Mr. Watts?

A. Yes sir.

Q. I wish you would tell us what was done and said here at that time.

A. I could hardly undertake to tell all that was said.

Q. I don't want it in full, but just tell the general tenor of it, of course, not for the instruction of your Honor, but

because we want it in the record. I have no hesitation in saying with perfect candor that we want to show that these gentlemen went away from here with the impression that this court was satisfied it had the jurisdiction and it proposed to coerce to the enforcement of that jurisdiction if necessary. If that general fact is admitted, I do not care to ask any questions:

By the court: Whom do you expect to admit it?

Mr. Miller: The gentlemen on the other side. They are representing the prosecution here. I suppose the case is like any other where there is a prosecution on the one side and the defense on the other.

The Court: I will cut it short this way. You may ask him as to what their impression about it was, but these proceedings in this court took all of one afternoon, beginning at three o'clock and lasting three hours and a half and lasting all the forenoon of the next day. You may ask him what impression he had, but it will take too much time for him to detail what was said.

To the Witness: You heard my statement. You may state what were the impressions you carried away with reference to whether this court was satisfied that it had jurisidiction and proposed to enforce its jurisdiction in the taking of that property if necessary.

A. I understood this court was satisfied it had the jurisdiction and that the state receiver would be expected to give up the property. I took no part in the first day's proceedings at all. In the morning I stated that the Trust Company would turn over the property to Mr. Connor as receiver of the Federal court.

By Mr. Miller:

Q. Did you not understand what you have stated, that this court was prepared to and would enforce its jurisdiction by taking the property out of the hands of the state receiver, if necessary?

A. I think the court stated that he did not want to come to New Albany with a club, but if necessary he would have to do it to sustain the jurisdiction of this court.

Mr. LaFollette: I want to introduce the certified copy of the transcript of the proceedings in the Floyd Circuit Court which was filed in the U. S. District Court on the 16th day of February, 1903, as bearing the certificate of the clerk of the Floyd Circuit Court under date of February 14th, 1903.

Mr. Miller: Let me ask you if that differs from the other transcript purporting to cover the same proceedings except in the addenda to the order of the 14th.

Mr. LaFollette: I think they are the same except that I want to introduce this other transcript.

Mr. Miller: As to that you may say you just want to put in the addition to that order.

Mr. Kealing: Just introduce the certified copy.

Mr. Miller: I do not think the court ought to allow duplicate records.

The Court: In this instance the proceedings of the Floyd Circuit Court are somewhat on trial. Here is a certified transcript with a certificate of the clerk that certain proceedings were had. Six days later some additional proceedings appear. You yourself characterized that as a forgery of the record, during this morning. Now it is proposed as I understand it to show that that forged record was certified with all the authority and solemnity that the genuine record was. This court is interested in knowing how far the proceedings down there were fraudulent.

Mr. Miller: I have no objection to the District attorney making a statement which shall go into the record showing the fact that your honor has stated.

The Court: That might be sufficient, but the record is the best evidence.

Mr. LaFollette: The question is whether the whole record or so much of the record that shows the order that purports to have been made by the Floyd Circuit Court on the 14th should go in? I am free to say that my idea now would be to introduce that part of the transcript that was filed on the 21st day of February that shows the order of the 14th, and the certificate thereto.

The Court: That is all I have admitted.

Mr. Miller: And to that I have no objection.

Mr. LaFollette: That I desire to offer, which includes the addition made to that record as testified to by Mr. Kelso and the certificate that appears to that.

Then I want to introduce further a copy of the writ addressed to the Sheriff of Floyd County which is attached to and is a part of the pleadings which is marked "copy" and purports to be a copy of the writ issued by the Floyd Circuit Court and which is a part of the last page of the record filed in this court on the 21st of February, 1903.

I desire to introduce in evidence that part of the exhibit B filed with the response of William W. Watts in this case, entitled Joseph T. Ryerson & Son, vs. M. Zier & Company in the matter of the receivership of said defendant, M. Zier & Co., New Albany Trust Company receiver, and reads, at the beginning, "now comes the United States Tube Company, by D. A. Sachs, its attorney and so forth" and is signed "respectfully submitted, United States Tube Company by D. A. Sachs, its attorney," and sworn to by D. A. Sachs, on the 20th day of February, before Bertha L. Scott, Notary Public.

The Court: What is that?

Mr. LaFollette: This is the petition which was filed in the Floyd Circuit Court, not in the court, before Judge Utz on the 20th of February, asking the removal of the New Albany Trust Co. as receiver and also that it be cited to appear and show cause why it should not be punished for contempt and that it be required to file its account immediately and turn over to its successors all the property it now has in its hands as such receiver belonging to said M. Zier & Co.

The Court: Do you object to that?

Mr. Fairleigh: Not at all. We expect to introduce all of that record. That is filed with our response as part of it.

Mr. LaFollette: We also introduce in evidence a certified copy of the adjudication of M. Zier & Co. as bankrupts.

Mr. Fairleigh: We object to that. When was that?

Mr. LaFollette: On the 9th of March, 1903.

The Court: You object to that?

Mr. Fairleigh: It cannot affect this transaction as it occured afterwards. It was a potentiality at that time, but it had not been done.

Mr. Miller: In some of the decisions, the court at some length goes on to show the difference between the present law and the law of 1867 in that it is held that the title of the property does not pass at the adjudication under the present law whereas it did pass under the old law at the time of filing the petition. I do not suppose it can do much harm one way or the other.

The Court: Then why take up time discussing?

Mr. Fairleigh: It is not necessary to encumber the record.

The Court: I am not sure but what the entire record of the bankruptcy proceedings ought to be introduced in evidence.

Mr. LaFollette: We offer in evidence the files, petitions and orders in the bankruptcy proceedings of M. Zier & Co.

Mr. Fairleigh: Up to when?

Mr. LaFollette: Up to the adjudication?

Mr. Fairleigh: We object to so much as includes the the orders made in the bankruptcy proceedings after the citation. As to the other we have no objection.

Mr. LaFollette: I think there would be force in that when we offer the adjudication. While it is for some purposes only an adjudication from the date it is entered, still it relates back to the time of the commencement of the proceedings as to the question of his being a bankrupt.

Mr. Fairleigh: We do not want to make any further objection.

The Court: You must either withdraw the objection or Mr. LaFollette will be heard.

Mr. Fairleigh: We cannot withdraw it.

Mr. LaFollette: The reason why that should be included and allowed is that the judication for some purposes and for purposes pertinent to this inquiry relates back to the time of filing the petition in bankruptcy and I think all ought to go in the record.

The Court: You have nothing further to say, but stand on your objections?

Mr. Fairleigh: I have nothing further to say.

The Court: Objection overruled.

Mr. Miller: We reserve an exception. The Government here rested.

W. W. Watts, called in his own behalf, being duly sworn and examined by Mr. Farleigh, testified as follows:

Q. You are Wm. W. Watts, defendant in these proceedings?

A. I am.

Q. Where do you live?

A. Louisville, Ky.

Q. What is your occupation?

A. I am a lawyer.

Q. Practicing lawyer?

A. Practicing at Louisville.

Q. How long have you been practicing law?

A. Since the fall of 1886, I think.

Q. I wish you would tell the court the circumstances attending your employment as attorney of Joseph T. Ryerson & Son, out of which grew the institution of the suit in the Floyd County, Indiana, Circuit Court, in the name of Joseph T. Ryerson & Son against M. Zier and Co?

A. It was on the morning of the 30th of December, 1902, that Mr. Jackson, whom I should say was an assistant credit man to Ryerson & Son, came into my office at Louisville and employed me to take charge of the claim of Ryerson & Son against M. Zier and Company at New Albany, and discussed with me what should be done. After that discussion I telephoned for Harry Jewett and he finally came over to the office and I told him we were going to apply for a receiver, and he finally said he thought there was nothing else to do but to have a receivership.

Q. Harry Jewett represented M. Zier & Co. as you understood it?

A. Yes sir.

Q. Suit was filed accordingly?

A. Suit was filed accordingly.

Q. On that day?

A. On that d y before Judge Utz sitting in chambers, and a receiver appointed, qualified and possession taken on that day.

Q. As the record shows. When did you learn that a petition in involuntary bankrupty had been filed in the United States District Court for the District of Indiana against M. Zier & Co. by the Inland Steel Co. and others?

A. I think it was only a day or two prior to the 13th of February last.

Q. When did you learn that the United States District Court in that bankrupt proceeding had appointed a receiver for the property and assets of M. Zier & Co.?

A. It was either on the 12th or on the 13th; because on the 13th I went over to New Albany to look over the situation and see what was to be done. I am not sure whether I knew of the receivership on the 12th or whether it was on the 13th that I learned it after I got there, but I went over for the purpose of the bankruptcy proceedings.

Q. When you got over to New Albany on the 13th, what did you learn with respect to the appointment of a receiver in the Federal Court?

A. Mr. Connor had been appointed receiver and wanted possession of the property and that brought about a clash which I then undertook to avoid.

Q. That was on the 13th that you learned that? Mr. Connor was in New Albany?

A. Yes sir.

Q. Was he in New Albany on that day or not?

A. I think he was.

Q. Do you remember whether you saw him on that day or do you know?

A. I am not certain whether I saw him. I spoke with Harry Jewett about it and I believe Mr. Jewett said he had seen him.

Q. Tell the court all you did about it?

A. I was at the office of Messrs. Jewett and Jewett and I first asked Harry Jewett what he thought of my telephoning to Judge Anderson and finally asked Col. Jewett and Col. Jewett said he thought it was the proper thing to do and I finally, over the long distance telephone made connection with Mr. Butler's office, that is the office of the clerk of this court—Do you want the details of that matter?

A. Yes.

Q. I asked that Judge Anderson be called to the telephone and Judge Anderson declined to come, so Mr. Butler said. I then told Mr. Butler that the appointment of a receiver in the Federal Court had brought about a clash of jurisdiction, which I thought ought to be avoided, and I believed Judge Anderson was not acquainted with all the facts and I wanted to come up to Indianapolis after getting some proper order from Judge Utz for the purpose of pre-

senting the matter to Judge Anderson so that he could see the facts as they were. Mr. Butler reported back to me after I held the telephone for some little time that Judge Anderson would see us on the Monday following, would see us, and that I should notify Mr. George H. Hester, one of the attorneys in this matter, of that fact.

Q. Did Mr. Hester represent the receiver?

A. Yes sir.

Q. Of the Federal Court?

A. Of the Federal Court and also these petitioning creditors in the banruptcy matter and some of the creditors in the state court matter. I immediately went from the telephone to the stenographer in Mr. Jewett's office and dictated a notice to Mr. Hester notifying him that I had telephoned as stated in substance and effect and further that Judge Anderson would not insist upon the enforcement of the order until we could be heard on Monday, and in the meantime I would go before Judge Utz and get some proper order—I don't remember exactly the wording of it, but it was substantially that. The notice has been heretofore filed in these proceedings and of course it speaks for itself. I also went to Judge Utz in chambers, I believe, or perhaps in his court room, and told him what I had done and told him that I had said over the telephone that I was to come before him and get some proper order and he said, "I think that is a right proceeding. I do not think Judge Anderson has been fully advised and I think it would be proper to follow that course. I felt that I was the attorney for Judge Utz's receiver and I was bound to submit a matter of that kind to him. I then went back home.

Q. Back to Louisville?

A. Yes sir. And I prepared—I believe I first ordered practically an entire copy of the record as it stood. I ordered a good many parts of the record and I then went to my office at Louisville and worked on the petition to be filed before Judge Utz and the order and pleadings that were to be filed up here before this court. On Saturday morning I went over to Judge Utz's court and as I got into the court room Harry Jewett said, "Here is a petition"—

Q. Was the court in session?"

A. Court was in session. "Here is a petition which Mr. Hester has filed and you should look at it." I looked at it and found a petition of Mr. Connor as receiver under the order and appointment by this court in which he set forth the order of his appointment and qualification and also sought the property that was in the hands of the State Court receiver. That petition has disappeared. It is not in the record down in the Floyd Circuit Court and I can not state

exactly what that petition shows, but as near as I remember it, what I have stated was in substance its contents.

By the Court:

Q. You say that Mr. Jewett handed it to you?

A. Yes sir.

Q. What did you do with it?

A. I read it over and there was something about it—I had just been through a case where the question was up—a similar question—and I wanted to know what position Mr. Hester was going to take with respect to that petition. I felt that if it was a general appearance there was no occasion for coming before this court. If it was not a general appearance, but a special appearance, then perhaps he would have to come before this court and I arose to my feet and stated to Judge Utz the fact that that petition had been filed.

Q. Was Mr. Hester there?

A. Yes sir. And thereupon I asked Mr. Hester to say whether his pleading constituted a general appearance or a special appearance. Mr. Hester declined to do it, saying that the paper spoke for itself. I then submitted to the Court or filed the petttion which I had and which had been verified.

Q. Was there any restriction of the petition of Connor filed by Mr. Hester?

A. I think not.

Q. (By the Court): Any what?

Mr. Fairleigh: Any protestation or restriction as to limited appearance.

Q. (By the Court): You said Harry Jewett handed it to you and it disappeared. I want to know what you did with it?

A. I took it before Judge Utz, argued it and left it there. Gave it to the clerk and when I went back from here and asked for the petition I was informed that Mr. Hester had taken it. That petition was called for here in this court several times, but it could not be found.

By Mr. Fairleigh:

Q. You filed a petition you had prepared before Judge Utz on that day?

A. Yes sir.

Q. And took the order which the record shows?

A. Yes sir. And thereupon I brought with me a certified copy of that petition and the order thereupon and filed it before his Honor Judge Anderson in this court and a pleading showing the facts with respect to the matter down there and showing in effect the order of that court and filing divers certified copies of that record, beginning with the filing of the petition of Ryerson & Son originally for the appointment of a receiver, the order on that petition, and the

report and petition of the New Albany Trust Co. receiver filed on January 16th upon which there was a subsequent sitting of the Court on January 24th when all of the creditors were present and the order made at that time and the several notices, two notices I believe to the creditors in this matter. I filed all those papers before this court and we began argument of the matter about two o'clock in the afternoon. Do you wish me to proceed?

Q. Proceed right along.

A. I argued the matter from about two o'clock in the afternoon until about half past five and then took it up in the morning about nine o'clock and continued for a while, whereupon Mr. Hester took up the argument and Harry Jewett addressed the court about noon and we adjourned for lunch and at two o'clock we were back before the court. A question arose early in the argument as to my having been guilty of a great discourtesy to this court. I disclaimed any intentional discourtesy to the court and after arguing the matter for all the time that we did argue it, finally after Harry Jewett had said—after he had discussed the matter—

Q. In what point was it regarded that you had been guilty of a discourtesy, in what respect?

A. His Honor Judge Anderson thought I had been guilty of a discourtesy to his court because I had obtained in effect a truce in the proceedings.

By the Court:

Q. On Friday?

A. On Friday. And in the mean time had, without any notice to anybody gone before Judge Utz and gotten the order directing me to come here and enjoining the different officials and so forth.

By Mr. Fairleigh:

Q. That was the point?

A. At the time, I insisted with Mr. Butler that I had said to him over the telephone that I would go before Judge Utz for the order. Mr. Butler said I had said nothing of that kind over the telephone to him, and it was a question of veracity between us and the Judge announced that he would believe Mr. Butler.

Q. Proceed.

A. At two o'clock on Tuesday—Mr. Jewett addressed the court as we were approaching noon on Tuesday, and then at two o'clock on Tuesday Mr. Jewett again addressed the court and after being questioned to some extent by Judge Anderson said that he would, as vice president of the New Albany Trust Co. turn over the property. Thereupon I took the floor and said to the court in effect, I wont undertake to repeat exactly my words, that I felt very keenly the charge

of discourtesy, and I proposed to eliminate from this case any evidence of any such thing and that I would ask leave of the court to withdraw the copy of the petition which had been filed in the Floyd Circuit Court on that Saturday morning, the copy of the order thereon and the pleading which I had filed before this court. The court gave me that leave and I withdrew those papers. I further said I did not think Judge Utz would be willing to rest under a charge of discourtesy and I would move him for an order expunging the order of the Floyd Circuit Court covering the matters that had taken place as I have illustrated on Saturday.

Q. What was the result of the argument here? Was there any suggestion made by this court about giving up the property or to you as attorney for the Trust Company about your advice and what was said?

A. Mr. Jewett was finally asked by the court whether he as the vice-president of the New Albany Trust Co. would deliver up that property. Mr. Jewett finally said that he would. He did wish to go before Judge Utz, but he finally said he would deliver the property irrespective of what Judge Utz said about it. I was then asked whether I would advise the giving up of the property and I said I would. I was asked in my capacity as attorney for the New Albany Trust Co., as receiver, and I said I would so advise.

Q. When did you return to New Albany?

A. We all went back home on Tuesday afternoon, the 17th, arriving about eight o'clock at night.

Q. When you got back to Louisville, what did you do in respect to these matters?

A. On the way to Louisville I had said to Mr. Jewett that I felt very much humiliated over what had occurred and I was going to ask Mr. Sachs to go over with me to explain the situation to Judge Utz and as far as possible try to square me with Judge Utz. That was the effect of it. I told him I felt it ought to be done and I wanted to be square. I wanted Judge Utz's good opinion, and other words to that effect. Next day on Wednesday, I asked Mr. Sachs to go with me and Mr. Sachs consented for the purpose of explaining the situation to Judge Utz as far as might be. And of saving me if necessary from Judge Utz's wrath, as far as he might be able to do it. The closer I got to New Albany the more did I question whether I had done the right thing by agreeing to advise the turning over of the property. That was the situation as I tell it to you and I went over to New Albany and arrived there at about three-thirty in the afternoon.

By Mr. Miller:

Q. Wednesday?

A. Wednesday. And we went before Judge Utz and I introduced Mr. Sachs to Judge Utz and Judge Utz to Mr. Sachs and I explained to Judge Utz what had occured here; what Mr. Jewett had agreed to do and what I had agreed to do. The result of that conference was that Judge Utz was very much exercised about the matter and finally said he wanted a conference with the lawyers in the case and asked us to go by and notify several of the counsel. Mr. Sachs and I went over to Mr. Jewett's office, we did not know where Mr. Kelso's office was, or where Mr. Stotsenberg's office was, or any of the other offices, except perhaps Mr. Hester's. And Mr. Jewett called up Mr. Kelso's office.

Q. Did you go from Judge Utz to Mr. Jewett's office?

A. Yes sir. And I told Mr. Jewett that Judge Utz wanted a conference. On Mr. Jewett's telephone message to Mr. Kelso, Mr. Sachs and I went over to Mr. Kelso's office. It was quite late by that time and we asked Mr. Kelso to notify the other counsel saying that Judge Utz wanted to see them.

Q. When?

A. Nine o'clock next morning. Mr. Kelso said I have just had a telephone message from Judge Utz in which he wants to see me for an interview at eight o'clock in the and thereupon he questioned me as to what had taken place at Indianapolis and I told him.

By the Court:

Q. Who questioned you?

A. Mr. Kelso and I explained the situation as it occured here and just as it occurred here. He wanted to know what I proposed to do with the property and I told him I proposed to give it up as far as I could. That the court had my promise, I won't say promise, my statement here. Mr. Kelso made some remarks about that matter and intimated that I ought not to have done it, that I ought not to have given it up. And with that we left.

By Mr. Fairleigh:

Q. Was there anything there said about the appointment of a new receiver?

A. Not at all.

Q. Was it suggested between you in any way?

A. Not at all.

Q. Who was with you?

A. Mr. Sachs.

Q. Anybody else?

A. No sir.

Q. Was there anything said about the New Albany Trust Co. resigning as receiver?

A. Not at all, on the contrary nothing of that kind was said. Mr. Kelso did tell us how he refused to sit down before

one of the Federal Judges, matters of that kind which had nothing to do with the case, as an illustration of why I should not have done as I did up here.

Q. You say there was nothing said about the appointment of a receiver, or the removal of the New Albany Trust Co. was there anything said about anybody paying the costs of any receivership?

A. No sir.

Q. Was there anything at all said about that?

A. Not at all.

Q. Can you think of anything upon which any misapprehension could have arisen—was there anything said at all about it?

A. Do you mean at that conference?

Q. At that particular time.

A. No sir, I cannot. Mr. Kelso knew I was arranging for preparations for the defense in the main bankruptcy proceedings.

Q. How did he know that?

A. Because I told him so.

By the Court:

Q. I do not understand what you mean by "defense in the main bankruptcy proceedings."

A. I mean that under section 18 of the bankruptcy act, as creditors, Ryerson & Son proposed to file an answer and defend against the original petition in bankruptcy in this court.

By Mr. Fairleigh:

Q. Did you go home after that?

A. Yes sir, we went home.

Q. Was anything said about notifying Mr. Stotsenberg—did Mr. Kelso say anything about notifying Mr. Stotsenberg?

A. Yes sir, I asked him to notify Mr. Stotsenberg, and he said they were not on good terms.

My recollection is he said he did not speak to Stotsenberg.

By the court:

Q. You mean that you were for Ryerson and Son to contest the allegations of preference in the bankruptcy proceedings?

A. Yes sir. I do not know, Your Honor please, that it was to be a contest of elections and preferences as much as it was either on the basis of election of remedies or estoppel as given in several opinions, which I have presented to your Honor.

By Mr. Fairleigh:

Q. Go on and relate the story after that. How long did you stay at Mr. Kelso's office?

A. Not a great while.

Q. You can not be accurate, but about how long?

A. Perhaps a half an hour or may be not a full half hour. Just a little while.

Q. What time did you return to Louisville that afternoon?

A. I think we got home in the neighborhood of six o'clock.

Q. Did you go immediately from Mr. Kelso's office to Louisville?

A. Yes sir.

Q. Did you stop anywhere on the way?

A. No sir; it takes about forty five minutes to get over on that road.

Q. What did you do next day?

A. The next day we went back over there, Mr. Sachs and I.

Q. That would be Thursday the 19th?

A. Yes sir. On Wednesday night I prepared a paper a copy of which is found in the record, in which I reported for the New Albany Trust Company that we had appeared before this court in obedience to that court's order and that there was no change in the order and that the order remained then as it was and I moved for leave to withdraw or expunge that part of the record in that cause which was made up on that Saturday.

Q. The 24th?

A. No on the 14th of February. That is, I sought to withdraw the petition I filed on that day and the order entered thereupon and have them expunged.

Q. Did you have a paper prepared when you went before Judge Utz; the evening before or a memorandum on yellow paper?

A. No sir, I prepared that on Wednesday night at my rooms in the hotel and filed it on Thursday morning before Judge Utz.

The court thereupon took a recess for lunch.

WEDNESDAY, MARCH 11, 1903.

AFTERNOON SESSION.

The Court met at two o'clock pursuant to adjournment.

The direct examination of the witness William W. Watts was resumed as follows:

Questions by Mr. Fairleigh:

Q. Mr. Watts just before the noon adjournment you stated to the Court that you had prepared in your room at the Willard Hotel in Louisville a petition to be filed—a petition or statement to be filed in the Floyd Circuit Court the following

morning, namely, Thursday morning. Did you go to New Albany Thursday morning?

A. Yes sir.

Q. Did you go to the Floyd Circuit Court?

A. I did.

Q. Did you go directly to the Court in the train or cars on which you went?

A. Yes sir, I went directly to the court house.

Q. Did you find Judge Utz in his chambers at the court house?

A. Yes sir.

Q. Was anyone else there when you got in?

A. On Thursday morning?

Q. Yes.

A. Yes sir, Mr. Kelso was there.

Q. Who accompanied you to Louisville, or New Albany, if anybody?

A. Mr. David Sachs.

Q. Well now tell the court what happened before Judge Utz that morning in his chambers at the court house?

The Court: Excuse me, was that the Thursday after they had been here to Indianapolis?

Mr. Fairleigh: Yes, sir.

The Court: The 19th?

Mr. Fairleigh: Yes.

A. You refer, Mr. Fairleigh, to Thursday, the 19th of February?

Q. Yes.

A. My recollection is that we got there in the neighborhood of ten o'clock in the morning. Judge Utz and Mr. Kelso were there.

Q. Did you file the petition before Judge Utz which you had prepared?

A. Yes sir, I filed that statement, prefacing its filing by a reiteration of what I had said the day before as to what had occurred at Indianapolis, explaining to Judge Utz why the order remained—the order of this court remained unchanged, and why I sought to expunge so much of the record as referred to our coming here to Indianapolis. It wasn't a great while after we were there, I think, that Harry Jewett came in, Henry Jewett.

Q. Was that statement signed by you as the attorney for the New Albany Trust Company?

A. It was.

Q. Do you know whether any other or separate paper was filed by the New Albany Trust Company that was not signed by you?

A. Yes, the New Albany Trust Company filed a report showing substantially the facts as they occurred here, and

what it had said it would do and what it proposed to do and as I remember it asked leave that it might do it.

Q. What action was taken by Judge Utz upon the presentation to him of these statements or petitions?

A. Judge Utz declined to grant the prayer of either petition, but being still very much in anger about the matter indicated that we were both of us guilty of contempt, and I think it was upon that day—

By Mr. Miller:

Q. (Interrupting) guilty of a contempt of his court?

A. Of his court. I think it was upon that day that he entered such orders as required us to appear and show cause why we should not be punished for contempt.

By Mr. Fairleigh:

Q. How long were you before Judge Utz that morning?

A. Well we got there about ten o'clock. I think we were back in Louisville at about half past twelve. We were before Judge Utz in the neighborhood of an hour and a half possibly.

Q. Did you go anywhere else about New Albany after you left Judge Utz's chambers?

A. Not unless I may have gone to Mr. Jewett's office.

Q. Did you take luncheon at New Albany that day?

A. No sir, I took lunch at Louisville; I lunched at the Willard Hotel at Louisville with my family.

Q. Did Mr. Sachs return to Louisville with you?

A. Yes sir.

Q. Was there any other or further discussion, as you now remember before Judge Utz that morning with reference to the appointment of a new receiver and the removal of the New Albany Trust Company as receiver? Did you hear anything of this? If so, tell the court what you heard?

A. That was on Thursday morning?

Q. Yes sir.

A. I don't recall that I did. Judge Utz was as I say very much exercised about what had occurred, and said that he didn't propose to give up the property,—words to that effect; and I really was exercised about my own position, and I don't recall that anything was said at that time.

Q. Do you remember whether Mr. Charles Jewett came into that court that morning?

A. Yes, Colonel Jewett came in; if I am not mistaken I think Mr. Harry Jewett preceded him, and then Colonel Jewett appeared. Colonel Jewett took the position that Mr. Harry Jewett as the vice-president of the New Albany Trust Company as receiver had agreed or stated while he was at Indianapolis to his Honor Judge Anderson that he would turn over the property to Mr. Connor as receiver, and that

that was the agreement; that no matter how embarrassing it might be to the trust company, the trust company was going to carry it out. I coincided with Colonel Jewett's views, and said that I had agreed—that was when the matter was being formally presented—that I had agreed to advise the trust company to turn the property over, and that I did so advise it notwithstanding what might happen.

Q. Did Mr. D. A. Sachs go to Mr. Jewett's office with you, do you remember, after you quit Judge Utz's office?

A. I am not certain that we went to Mr. Jewett's office on that morning; I was at his office quite a number of times during the week, but whether that day or not I don't know; I know we got home early, perhaps half past twelve afternoon.

Q. Where were you during the Thursday afternoon after you went to Louisville?

A. After taking my lunch at the hotel I went to my office and all of a sudden a great weakness came over me, my legs went from under me, and I went to my hotel and went to bed. I was in bed Thursday afternoon from about three o'clock until the next day.

Q. During the time or about the time that Col. Jewett was addressing the court on Thursday do you remember whether any inquiry was made of him by anybody as to whether the property had been actually delivered by the New Albany Trust Company to Conner, receiver?

A. Well such an inquiry might have been made. I don't know that it was, or was not.

Q. Do you know whether you had any actual knowledge on that Thursday before you left New Albany or after you left New Albany that the property had been actually turned over to Connor, receiver, by the New Albany Trust Company?

A. Yes sir, I remember Mr. Hester — not Mr. Hester, strike that out please—Mr. Kelso telephoning to Mr. Sauer who was secretary asking whether or not the property had been turned over.

Q. Where was Mr. Kelso when he was telephoning?

A. He was seated in the Judge's chambers there.

Q. What did you do Friday morning? Did you go to New Albany Friday morning?

A. Thursday afternoon I was in bed. Mr. Sachs reported to me that Mr. Kelso had called him up and said that he and Judge Utz wanted to see us.

Q. When?

A. Friday morning.

Q. Well what did you do Friday morning?

A. We went over there Friday morning.

Q. What time did you arrive at New Albany?

A. I should say about ten o'clock.

Q. Where did you go ?

A. We went to Judge Utz's office.

Q. Who did you find there ?

A. Judge Utz.

Q. Anyone else ?

A. Mr. Kelso.

Q. Anyone else ?

A. I think not.

Q. What was said when you went in ? What was said between you whilst you were there if you now remember ? What was done ?

A. It is right difficult to keep these things chronologically in your mind. Friday was the day—well we got there about ten o'clock; we went in to see Judge Utz; we were there for a few minutes when, as I remember it, as to myself, I believe it was on that day that I got the first knowledge of being ruled or cited; but at all events after sitting there a few moments—

Q. (Interrupting.) Ruled or cited to appear in what court?

A. Before Judge Utz. After sitting there a few moments I went out for the purpose of doing some further things with respect to the defense in the bankruptcy proceedings in this court. Before I left Indianapolis on the 17th inst. I had ordered from Mr. Butler, the clerk, a full copy of the record.

Q. The 17th of February ?

A. The 17th of February—A full copy of the record, and that record hadn't been sent down to me yet; and I was looking out for that and looking out for the—on the question of what defense would be made, when we should plead and various of such matters.

Q. Where did you go to look into that ?

A. In that connection I went to the office of Mr. Cardwill the deputy clerk of this court, and to Mr. Jewett's office.

Q. Did you go anywhere else during that day, if you remember, whilst you were in New Albany ?

A. Oh yes, I went to a great many places; I went back and forth; I went to Mr. Cardwill's office two or three times trying to get in there, and was in Jewett's office two or three times.

Q. Did you do back to Judge Utz's chambers?

A. I went back to Judge Utz's chambers at three o'clock in the afternoon, as I remember it.

Q. Did you take lunch at New Albany on that day ?

A. Yes sir.

Q. With whom ?

A. I lunched with Mr. Sachs and with Mr. Kelso.

Q. Had you been in Mr. Kelso's office that morning?

A. I don't think I had been. When we separated it was a question of where lunch would be gotten and it was agreed that lunch should be gotten at Mr. Goodbug's.

Q. Where did you separate, Mr. Watts, from Mr Sachs?

A. It seems to me that we separated in Judge Utz's office.

Q. So that Mr. Sachs and Mr. Kelso came to Mr. Goodbug's where you were taking lunch?

A. Yes sir.

Q. And you lunched together?

A. Yes sir.

Q. Thence where did you go?

A. Thence we went back to the court house.

Q. Altogether?

A. Altogether, except that I didn't go into the court house. I went on, then, to Mr. Cardwill's office. Mr. Cardwill hadn't yet gotten back from lunch, and I went to Mr. Jewett's office, and then subsequently went back to Mr. Cardwill's office again, and then from Cardwill's office I went to the New Albany Trust Company. The New Albany Trust Company and I as attorney for Ryerson & Son had been notified to be present before Judge Utz at three o'clock that afternoon.

Q. For what purpose?

A. On the action of the court with respect to the report—No, on the action of the court with respect to the pleading that we filed concerning the action of the New Albany Trust Company in this matter.

Q. When, if at all, that day did you first learn anything about the New Albany Trust Company being removed or being about to be removed, if you knew it in advance, and another person being appointed in its stead as receiver by Judge Utz? When did you get any information about that at all?

A. Well, definite information of it came from the action of Judge Utz at that time, as I remember, at three o'clock.

Q. Well, what did you do after you returned to Judge Utz's chambers? What did you do or say?

A. Well I did nothing; I took a back seat in the matter; Mr—I think Colonel Jewett was there with the president of his company, and it may have been Mr. Harry Jewett, I don't remember which, one or the other was there, and Judge Utz very probably announced that he was going to remove the New Albany Trust Company, and directed Mr. Kelso to make up the papers, make up the orders. The question of what his bond should be was raised; Mr. Kelso took the position that the bond ought to be small; Judge Utz took the position that the bond ought to be $30,000,

and at that meeting there was present, as I remember it, Mr. Kelso, one of the clerks, Mr. Joe Sachs, Mr. Dave Sachs and myself. I don't know whether the Jewetts were there at the time of the arrangement about the bond. Or, I know now, it was Mr. Harry Jewett; Mr. Harry Jewett went with me from the trust company at three o'clock in the afternoon to go to Judge Utz, and as I recollect it he didn't stay very long. The bond was arranged for, and Judge Utz instructed Mr. Kelso to prepare the necessary and proper orders

Q. Were the orders prepared there as you remember? How long did you stay?

A. Oh I don't know anything about where the orders were prepared or anything about that. I know Judge Utz had his mind made up as to what he was going to do and did it very promptly. We were not there over fifteen or twenty minutes I should say.

Q. What participation, if any did you have in the action respecting the removal of the trust company and the appointment of another receiver?

A. I had none.

Q. Nothing whatever?

A. None whatever; on the contrary, I was at all times adhering to the proposition of trying to efface the terrible charge of discourtesy that had been made against me and trying to get the property turned over to Mr. Connor, receiver.

Q. Did you do anything there or advise anything there against that original intention of turning over that property?

A. No; on the contrary I always said it should be done.

Q. Did you do anything there or advise anything there, or abet the doing of anything looking to the retaking of that property by Kelso, receiver.

A. No sir I did not.

Q. Who left with you when you left Judge Utz's chambers that afternoon, that Friday afternoon?

A. Mr. Joe Sachs, Mr. D. A. Sachs' brother—

Q. (Interrupting) What was the occasion of leaving?

A. (Continuing previous answer) Was there to see about what was known as the Walters contract; he and Mr. Hester represented Walters and Walters was to get certain boilers installed and so forth, and at the so-called creditors' meeting an order had been entered directing the receiver what to do about that; and Mr. Joe Sachs was very much disturbed about whether he was going to get his boilers, now that the question of the clash of jurisdiction had arisen; and he was there to see Judge Utz about it; and he extended an invitation to Judge Utz to go the cafe; extended that invitation to me and I accepted it.

Q. Was it extended to anybody else?

A. It was extended to everybody. Yes sir.

Q. Who accepted it?

A. Judge Utz and I only.

Q. Well did you and Judge Utz and Mr. Joe Sachs go out together to the cafe?

A. I think we did. I am very sure we did.

Q. Whom did you leave in the room, if anybody?

A. My recollection is we left Mr. David Sachs in the room, possibly Mr. Kelso; but Judge Utz had instructed Mr. Kelso to go and prepare the papers in the meantime.

Q. That is to say from the judge's chambers you left?

A. Yes sir.

Q. Do you know whether Mr. Kelso had gone out ahead of you, or did you leave him there, or did he go out with you?

A. It seems to me now that Mr. Kelso went with us, and got a cigar, and then left us and went on to his office.

Q. Is that a positive recollection?

A. Well I can't say that it is positive, no: I think that is the fact.

Q. Where was Mr. David Sachs?

A. Mr. Sachs wasn't feeling very well, and we left him at the office.

Q. You left him in the office of Judge Utz.

A. Judge Utz's office. Yes sir.

Q. Did Mr. Sachs make any exceuse for not going with you to the cafe?

A. Mr. Sachs declined the invitation to take a drink. That was rather a novel proposition.

Q. What reason did he give for it, if any?

A. He wasn't feeling very well.

Q. Well you did go to the cafe?

A. Yes sir.

Q. You, Judge Utz and Mr. Joe Sachs?

A. And Mr. Joe Sachs. Yes sir.

Q. How far away from the court room was that?

A. That was a half block one way and a half block another; a block in all.

Q. About what time in the afternoon was this, Mr. Watts? Give your best recollection about that?

A. It was about half past three, thereabout.

Q. How long did you stay at the cafe?

A. All afternoon.

Q. Did any of these three, Judge Utz or Mr. Joe Sachs leave during this time, during this time you all stayed there, or during the time you stayed there?

A. Judge Utz left after we had been in there some considerable time.

Q. Who remained with you?

A. Mr. Joe Sachs and I.

Q. What time did you arise from that sitting?

A. We arose from that sitting at about half past five or a quarter to six.

Q. Where did you go?

A. We went outside and started up the street toward what I believe is Spring street; we fell in with Mr. Zier, Michael Zier.

Q. Where did you see him?

A. Right there in that neighborhood; right, I think, at the trust company, or next to the trust company building.

Q. Was it just a casual meeting?

A. Just a casual meeting; Mr. Sachs was talking about his boilers.

Q. Which Mr. Sachs?

A. Mr. Joe Sachs.

Q. Talking to Mr. Zier about it?

A. Talking to Mr. Zier about whether or not he was going to get his boilers, and how he was going to get them, and what his people were going to do in the meantime if they didn't get them; and whether or not some arrangement couldn't be made if this conflict was going to keep up whether some other arrangement could be made for completing the boilers.

Q. What was your purpose? Where did you intend to go when you left the cafe? Where were you going?

A. Well we were going to Spring Street for the purpose of catching a car Mr. Joe Sachs wanted to find his brother Dave, and he went to the court house to find him.

Q. Well did he find him?

A. No, Mr. Joe Sachs after leaving me at the corner, talking with Mr. Zier, went to the court house and came running down; he had been sick; he was sick that afternoon and the next thing I saw of him was that he was running to catch a car that was at that moment and ready to start.

Q. Did he pass you and Mr. Zier?

A. He passed us.

Q. What did he say?

Q. He sang out that he had been able to see Dave and he was going home; that was at six o'clock; it was what was known as the six o'clock car.

Q. When thereafter did you see Mr. David Sachs?

A. Immediately thereafter Mr. David Sachs came along.

Q. Was he alone?

A. I think he was; he was alone; Mr. Kelso immediately followed and I was still talking to Zier; I wanted to know of Zier what Zier was going to do with respect to the

bankruptcy proceedings, and I was talking to him on those lines, and upon Mr. Sachs and Mr. Kelso coming up I left Zier and went with them.

Q. Well the car had passed; the six o clock car had passed.

A. Yes sir.

Q. How long was it then before another car would come?

A. Well it wasn't very long.

Q. How many minutes, if you know?

A. Oh I should say not exceeding five.

Q. Well you and Mr. David Sachs and Mr. Kelso then walked along together?

A. Oh we went across the street and Mr. Sachs and I caught the car.

Q. How far did you walk with Mr. Kelso?

A. We didn't walk with him at all, except across the street?

Q. What did Mr. Kelso say to you after he came up about these business transactions, if anything?

A. I don't think Mr. Kelso said anything at all.

Q. What did you say, if anything?

H. I don't think I said anything. We were not together but the time for crossing the street.

Q. What did Mr. David A. Sachs say, if anything?

A. I don't remember what Mr. Sachs said except that he and I, whenever we got an opportunity, discussed the question of my contempt before Judge Utz, the charge of contempt before Judge Utz, and as to just what happened there or what was discussed, my mind was very much clouded; I don't know what was discussed.

Q. Did Mr. Kelso say to you where he was going?

A. Not that I recall.

Q. Did you know where he was going?

A. I did not.

Q. Thereupon you and Mr. David A. Sachs took the car to Louisville?

A. Yes sir.

Q. That was Friday evening, the 20th?

A. That was Friday evening, the 20th of February.

Q. Well, now, going back to that Friday sitting before Judge Utz, did Mr. Kelso or anybody else, say anything to you or to Mr. David Sachs in your presence about you or him paying the costs?

A. No sir.

Q. Of any proceeding whatever?

A. No sir; none at all.

Q. Was that ever mentioned at any time until in the meeting in Louisville on Monday or Tuesday?

A. Not at all; and if I may make an explanation, it could not have been mentioned so far as I was concerned, for

this reason: I not only had stated to Judge Anderson that I would advise the turning over of the property to Mr. Connor, not only had I filed a report and petition showing substantially the facts to Judge Utz, I had stated to him orally, but Mr. Jackson who was here on the day of the 16th and 17th of February—

Q. (Interrupting) Here in Indianapolis, you mean.

A. Yes sir; as the representative of my client, Ryerson & Son, whose claim was $15,000 and the only one of material moment that I was representing, had said to me "It must be a receiver anyway; go in there and make that assent.

By the Court:

Q. Go in and make what?

A. Go in before you and do what I did do in the afternoon of the 17th inst.

By Mr. Fairleigh:

Q. So that was with the approval of your client?

A. Oh yes, yes sir.

Q. What time did you get to Louisville on Friday evening the 20th of February?

A. It takes about 45 minutes to go over; we got there at about a quarter of seven or seven o'clock.

Q. What did you do that night? Did you go anywhere that night?

A. Friday night?

Q. Yes.

A. I went to bed.

Q. Was Mr. David A. Sachs with you that night after you got to Louisville?

A. Oh no, no sir.

Q. Now on Saturday as I understand you you had been ruled by Judge Utz to appear before him at three o'clock P. M.; did you make any appearance before him on Saturday?

A. We asked Judge Utz to extend the time.

Q. Did you make any appearance before him on that day?

A. Oh yes, we were there before him.

Q. At what time did you arrive in New Albany?

A. I am not certain about that but I think it was just before lunch time.

Q. Did you take lunch in New Albany?

A. Yes sir.

Q. With whom?

A. Mr. Sachs and I lunched together.

Q. Mr. David A. Sachs?

A. Yes sir.

Q. Anybody else?

A. No sir.

Q. Where did you go from the lunch room?

A. I think we went from the train to the lunch roon.

Q. Where did you go from the lunch room?

A. My impression is that we went to the court house.

Q. Directly?

A. Yes sir?

Q. Was Judge Utz there?

A. Yes sir.

Q. Anybody else?

A. Mr. Kelso may have been there. I don't know whether he was or not.

Q. What proceedings were taken before Judge Utz then?

A. The only proceeding was that Judge Utz very kindly said that the rule as to the New Albany Trust Company had been respited until Wednesday, and mine might go too.

Q. So the rule was respited until Wednesday following?

A. Yes sir.

Q. How long were you before Judge Utz then?

A. Well we were not very long before him until there was another adjournment to the cafe.

Q. Who went with you?

A. Judge Utz, Mr. Kelso, I think Mr. Sachs; and later in the afternoon—

Q. (Interrupting) David A. Sachs?

A. Yes sir; and later in the afternoon Colonel Jewett came in?

Q. Now this was Saturday afternoon?

A. Yes sir.

Q. How long did you stay there?

A. Well we stayed there till dark?

Q. Did you all remain there until dark, all those you have named?

A. Well no, Colonel Jewett was only there for a little while. I think he came in and he and Judge Utz went out together.

Q. Mr. Kelso, when did he leave?

A. I don't remember how long Mr. Kelso stayed, but he stayed for awhile. He was smoking only. He wasn't drinking anything.

Q. Were you and Mr. David A. Sachs after awhile left alone in the cafe?

A. Yes sir; yes sir, and we finally went home together.

Q. From the cafe?

A. Yes sir.

Q. Are you certain, Mr. Watts that you were in the cafe twice, spent two afternoons in the cafe at New Albany?

A. I am positive about it, sir.

Q. Well what time did you get to Louisville that evening, Saturday evening?

A. Some time between five and six o'clock I would say. A good many of these matters that didn't impress themselves upon my mind in any way, but I should say between five and six o'clock sometime.

Q. On that day, Saturday, to-wit, what was said between you and Mr. Kelso or Judge Utz in regard to this receivership, if you remember? Was there any talk about it specially.

A. I don't remember that there was any particular talk at that time. There were quite a number of times when on that day I suppose, and at different other days, different times, when Judge Utz and Mr. Kelso were anxious to know from me what had taken place at Indianapolis, what were the facts, what I had agreed to do, what was the order that was entered, if any, and everything relating to these matters. There were quite a number of hypothetical questions stated, propositions stated, wherein I was asked to state what I thought about that with respect to the bankruptcy law and I gave them my idea; whether there was anything said on Saturday or not, except in a general way, I should say no. I might say this further; as I recollect it I spent a good deal of the time on Saturday in discussing with both Colonel Jewett and Harry Jewett finally the question of what should be done for Zier & Company and Ryerson & Son, Zier & Company being a defendant and Ryerson & Son as a creditor proposing to come in and become a defendant, what should be done for them in the original bankruptcy proceedings, and what pleadings should be filed, and how they should be prepared, and who should prepare them; further there was divers questions that were discussed which required my presence over there as I saw it; one for instance was when was the time to answer.

Q. Answer where?

A. In that bankruptcy proceeding; the question in my mind as to whether the clerk had exceeded his power in fixing the return day and whether we had a right to rely on that or whether we should answer, and how we should plead, whether by plea, answer or demurrer; all these questions were discussed by Colonel Jewett and Mr. Harry Jewett and myself during these several days.

By the Court:

Q. You never filed any kind of a plea, did you?

A. No sir I did not; I intended to do it at that time.

By Mr. Fairleigh:

Q. Well why didn't you file it?

A. I only knew from what my brother reported to me, to-wit, that Ryerson & Son instructed us not to defend since all of this occurred.

By the Court:

Q. Well Ryerson & Son had already told you here in Indianapolis to consent to the turning over of the property to this court and its administration here, and you so testified, didn't you?

A. Your Honor—

Q. (Interrupting) You so testified, didn't you?

A. Only as to the turning over of the property.

Q. Ryerson, I understood you to stay, that Ryerson's agent here at Indianapolis told you to consent to the turning of the property over to this court?

A. Yes sir, but at the same time instructed me to prepare a defense to the bankruptcy proceedings; the original instruction was only for the purpose of consenting to the turning over of the property, but they also instructed me to proceed to the defense of the bankruptcy proceeding.

Q. One of the causes of bankruptcy alleged was the preference made to Ryerson & Son?

A. Yes, but whether that was a preference was a matter of opinion.

Q. I say that was one of the causes alleged, was it not?

A. Yes that is true.

By Mr. Fairleigh:

Q. When did you, if at all, again receive any communication from the parties at New Albany after you returned to Louisville on Saturday night?

A. Somebody telephoned me that night at about half past ten or eleven o'clock; I suppose it was from New Albany.

Q. Where were you?

A. I was in my room at the hotel asleep; I was waked up; the telephone in my room rang, and I answered it; Some body said that we had been all of us cited to appear in this court for contempt.

Q. What did they desire you to do, the person who advised you over the phone?

A. It was a question whether I should come over there then or come over in the morning; I finally said there was no occasion for me to come over except on Sunday, and I finally went over on Sunday.

Q. Do you know who telephoned you?

A. No, I couldn't say.

Q. So you did go over on Sunday morning?

A. Yes sir.

Q. That was the 21st day of February or the 22d day of February?

A. That was the next day in order.

Mr. Miller: The 22d.

Q. Where did you go that morning, Sunday the 22d of February?

A. Sunday was the 22d. Either Mr. Sachs called me up or I called him up, and we agreed to go over and we went over to New Albany along about ten or half past ten, and we went to Judge Utz's—to the court house; it was quite cold, and just as we got to the door Judge Utz and Mr. Kelso came out of the court house; Mr. Kelso said that there was no fire there and he would make a fire in his office if we would go with him and invited us over, and we went.

Q. Did they have a copy of the rule which had been issued by the United States district court?

A. Yes sir, that was the main purpose of our going over there to see in what manner we were involved in the citation.

Q. You say the main purpose, was there any other purpose?

A. No, no other purpose; that was the purpose of going.

Q. Well what did you do there that day at Mr. Kelso's office?

A. We generally discussed the question of responses; Mr. Kelso said he wasn't familiar with the practice in the court, and asked divers questions as to how the response ought to be made and matters of that character; I think there was nothing else discussed than the general proposition of how the responses ought to be made; What response ought to be made.

Q. What time did the meeting adjourn?

A. The meeting adjourned a little before twelve o'clock.

Q. Where did you and Mr. Sachs go?

A. We went home.

Q. Arriving at Louisville about what time?

A. About, my recollection is about one o'clock. Yes I know it was about one o'clock. I took dinner at the hotel on that day.

Q. Did you after that have any meeting with Judge Utz or Mr. Kelso or either of them? I don't mean on that day, but at any time?

A. On the following day, Monday.

Q. How was that meeting brought about?

A. We received two telephone messages from Mr. Sachs asking us to come over to his office.

Q. Who received them?

A. I received the message. My brother and I were then discussing the question of these rules, the rules from this court.

Q. What time of day was that on Monday as near as you can remember?

A. What do you mean?

Q. What time of day was it when Mr. Sachs telephoned you or your brother to come over to his office?

A. He telephoned about nine o'clock, I believe, or half past nine; I said I couldn't come; then; he then telephoned about eleven o'clock, or half past and said that Mr. Kelso had come and brought with him a copy of the order.

Q. On Sunday was there any arrangement made between you and Mr. Sachs and Mr. Kelso and Judge Utz for a meeting on Monday?

A. Yes, Mr. Kelso wanted to come over, and the arrangement was that he should come over on Monday.

Q. And accordingly he did come over?

A. And accordingly he did come over.

Q. What time did you get to Sachs' office, if you remember?

A. I got to Mr. Sachs' office with my brother John at somewhere between eleven and eleven-twenty.

Q. Who was in Mr. Sachs' office when you got there?

A. Mr. Kelso was there, Mr. Maurice Sachs, Mr. David Sachs, my brother John and myself.

Q. Well tell the court what was done and said there at that meeting?

A. The first thing that was done was that Mr. Sachs had a paper which he said purported to be an order of this court, made on the 17th day of February—

Q. (Interrupting) Was that the first time you had—

A. (Interrupting) He asked me if I knew anything of that order. I told him that I did not. Asked me what my idea was about the order, as I had been asked a half a dozen times before by Judge Utz and Mr. Kelso, and I told him just as I had said before that I had no idea that any order was going to be entered. That order purported—I don't remember all the terms,—But purported to show that Mr. Jewett and I had appeared here voluntarily in this court—well the order will speak for itself.

Q. Yes, the order speaks for itself. That is the order of the United States district court in the bankruptcy proceeding entered on the 17th day of February that you refer to?

A. Yes sir.

Q. That order was there or a copy?

A. What purported to be a copy.

Q. It was a copy I suppose?

A. I suppose it was. I don't doubt that.

Q. Well?

A. Well I told him I didn't know of any such order, and Mr. Sachs took the position with Mr. Kelso that that order

effectively settled this question so far as the taking of the property was concerned.

Q. Was there anything else talked about except the response that was to be made by Mr. Kelso to this rule in the District Court?

A. There was some talk about the response, and how the response ought to be made; and either Mr. Sachs said that Mr. Kelso ought to get him a lawyer, or Mr. Kelso said he was going to get one; and about that time my brother John, in the presence of Mr. David Sachs, Mr. Maurice Sachs, Mr. Kelso and myself said to Mr. Kelso, in effect these words: I will quote them as nearly as I can: "Mr. Kelso, did my brother, W. W. say anything or do anything or in any way indicate that he would have this property kept in the State court, and away from the Federal Court at any time since his appearance at Indianapolis?" Mr. Kelso said: "He did not." The same question was put to Mr. Sachs, Mr. David A. Sachs.

Q. With reference to David A. Sachs, to him?

A. No no, as to me. The same question was put to Mr. David A. Sachs, and Mr. Sachs said "No," just as Mr. Kelso had done. My brother then said, "Gentlemen, I will then ask you for your affidavits so that those affidavits may be filed with my brother, W. W.'s response." Mr. Kelso and Mr. Sachs both agreed to make their affidavits to that effect. Thereupon my brother said: "Then I think, gentlemen, it is time for my brother, W. W. to withdraw from this conference." Thereupon the question was submitted to Mr. Maurice Sachs as to whether there was any impropriety in my being there at that conference, and Mr. Maurice Sachs said no, we are only considering the responses, and inasmuch as it was a matter of very grave importance we stayed.

Q. Was there anything said by anybody at that time about the payment of costs and expenses?

A. That was in the morning. No, there was not.

Q. Well what was said in the morning; or at any time?

A. About that? I said what I have just related to the court in the morning; now nothing was said at that time about costs or expenses.

Q. Well how long did this meeting continue?

A. While we were there some one came in from the front part of Mr. Sachs' office saying that Judge Utz had telephoned that he wanted to come over; the question was should Judge Utz come over, and some one present said: "Yes, tell him to come over," and Mr. Dave Sachs went to the telephone himself and came back and reported that Judge Utz would be there at two o'clock I think it was; whereupon I told Mr. Kelso and Mr. Sachs and the others

there that I had an engagement with Colonel Jewett,—or rather I had an engagement with reference to Colonel Jewett appearing here for me, and that that engagement was to be kept by me at half past one o'clock. At half past one o'clock Mr. Harry Jewett came to my office as the representative of his brother Charle, and said to me that under all the circumstances of the case he thought it would be wiser for me to get other counsel.

Q. I suppose that is immaterial;but did you go back in the afternoon to Mr. Sachs' office?

A. In the afternoon I again went back; we were called at about three o'clock, I should say, by telephone.

Q. When you say "we" who were they?

A. My brother and I.

Q. Your brother John?

A. My brother John, and we both went back to Mr. Sachs' office, and Judge Utz in the meantime had come in.

Q. He was there when you got there?

A. He was there when we got there, as was also Mr. Kelso, and Mr. David Sachs, Mr. Maurice Sachs, and Mr. Joe Sachs. One of the first things that was said when I went in was by Mr. David Sachs to the effect, or his words were as nearly as I can remember them, "Mr. Watts, Mr. Kelso thinks you ought to raise the money for the defenses of these rules, or these proceedings." Well I was amazed at any such proposition as that, and I said so, and I asked how I could be expected, upon what basis I could be expected to raise any money; they didn't bring me any business, and I didn't agree to raise any money nor was any money raised by me.

Q. Did you make any agreement to?

A. Not at all.

Q. Was it ever suggested to you before that?

A. No sir.

Q. Had it ever come to you in any other form than that?

A. No sir, not at all. Now it was thereupon that my brother then said to Judge Utz, "Now Judge Utz, I ask you whether my brother had in any way taken part in these proceedings, or bound himself in any way whereby it might be inferred that he was going to endeavor to keep that property from the Federal Court into the State Court; I will ask you now Judge Utz whether any such thing occurred?" Judge Utz said, No, that nothing of the kind had happened; that on the contrary I had always taken the position that I agreed to advise the turning over the property, and in his presence had done so.

Q. Well what else was done at that conference that afternoon? Done or said? Did you talk about anything else than the making of these responses?

A. I think that was the burden of the whole talk.

Q. What time did it adjourn—the meeting break up?

A. I think Mr. Kelso and Judge Utz left about half past four, and left shortly thereafter.

Q. Did Mr. Kelso do anything about employing counsel that evening by telephone or telegraph.?

A. Yes; at least he said so; the question was—Oh yes; Kelso did say that it was going to take three or four thousand dollars to make the defenses in these matters here, and Judge Utz assured him that it wouldn't take any such moneys, but that he had certain moneys in his hands, in the hands of his court which could be used for the expenses of himself as receiver; and Mr. Kelso then said he was going to get himself a lawyer at Indianapolis. Judge Utz wanted to know who; my recollection is that ye said Ferd Winter. They discussed the question of whether or not he was a Republican or Democrat. It was said by Mr. Kelso that Ferd Winter was interested in the Water Works controversy as the repsesentative of Noble Butler, and that he proposed to get Mr. Ferd Winter. Thereupon he left us with a view of going to the telephone, as he had to call up Indianapolis. He came back in about half an hour, Judge Utz waiting in the office in the meantime, saying that he had been,—I don't know, either that he had been unable to get him, or couldn't get him, I don't know what; but that he couldn't get him, and he would have to go to Indianapolis and get other counsel.

Q. Was that the last meeting you had in which Judge Utz and Mr. Kelso took part?

A. Yes that was the last we saw of them.

Q. I will ask you in that connection whether there was anything said about your appearance here in response to that rule? Any discussion about that?

A. Yes there was a good deal said about that; there was a good deal said about my appearance; I had fully expected to appear and make response, I think it was the 25th wasn't it? the 25th; on whatever day that first day was I fully expected and intended to appear. I think it was in the morning of that Monday conference that I asked Mr. Kelso what he would say about my coming to Indianapolis. I had not been served. I let him understand that my desire was to come.

By Mr. Miller:

Q. You say you have not been served?

A. I had not been served. I let him understand that my desire was to come. I thought I had nothing to fear. He said "I wouldn't go"; was very positive about it. Then in the afternoon when Judge Utz came I said to Judge Utz

"Judge, Mr. Kelso thinks I ought not to go to Indianapolis voluntarily; what do you say about my going?" Judge said "I believe I would not go voluntarily." Mr. Kelso spoke up, then, and said this: "In my conversation with Mr. Hester, Mr. Hester told me that Watts was the man that Judge Anderson was after". Well that gave me a very considerable shock, and I said to Judge Utz, I said: "That makes me question whether I ought to voluntarily go or what I ought to do". Judge Utz said: Mr. Watts you ought not to go; I don't think you ought to go". Well I said "I don't know whether I will go or not", and my brother, who was to a very large extent acting for me, said—I believe it was the general concensus of opinion that perhaps I ought not to go, but my brother said: "No, I won't assent to that; I don't think he has got anything to fear, and my idea is that he ought to go". We left that evening with the question of my coming to Indianapolis undetermined and undecided. That night I went home with my brother to his house. The next morning I couldn't use my legs. I was on the verge of nervous prostration, have been ever since and am now, and it was only by staying in bed almost the entire time that I have been able to get here to-day and be in the condition that I am in now.

By Mr. Fairleigh:

Q. Were you served with any citation or process?

A. Well there was an order of arrest sent over there and through the kindness of Mr. Hill it was arranged that I might give bail in the sum of $2,000; the marshal came down to the house where I was in bed, and my brother John and my brother Ben executed the bail for me; I signed the papers and that disposed of that matter.

Q. I wish you would state to this court generally whether in any act or deed of yours, any advice that you ever gave, you in any way undertook to prevent the turning over of the property of M. Zier & Company, from the New Albany Trust Company, receiver, to Connor, receiver?

A. I did not.

Q. Did you ever in any way advise aid or abet the appointment of Kelso, receiver.

A. I did not.

Q. Did you ever in any way advise, aid or abet, in any way, remotely, directly or contingently, the retaking of the property after it had been placed in the hands of Connor, receiver?

A. No sir, I did not.

Questions by Mr. Smith, of counsel for Defendant Sachs:

Q. Mr. Watts, Mr. Sachs had no connection with this case whatever until when?

A. Until I asked him to go to New Albany with me.

Q. What day was that?

A. That was Wednesday the 18th of February.

Q. That was after your return from Indianapolis on the 17th? It was the next day?

A. Yes sir.

Q. To your knowledge did Mr. Sachs ever have any other connection with this case in any way except as your representative o.. the contempt matter before Judge Utz?

A. Not to my knowledge.

Q. You heard the conversation or at least you were with Mr. Sachs at the time on Wednesday afternoon that you went to the office of Mr. Kelso where you said you remained some half hour; was there anything said there by Mr. Sachs in the way of advice in regard to the removal of the Trust Company? or the appointment of Mr. Kelso or any other receiver in its stead?

A. No the conversation of that afternoon as I remember it was largely made up of what Mr. Kelso himself said and my rehearsal of what had occurred here.

Q. Was there anything there upon that afternoon said by any of you in regard to the acceptance by Mr. Kelso of the trust providing you gentlemen or either of you would indemnify as against costs or damages that might result by reason of his acceptance.

A. No sir.

Q. You introduced Mr. Sachs to Mr. Kelso, on that visit?

A. I did.

Q. Who did the talking there, or at least most of the talk-talking, you or Mr. Sachs?

A. Well I should say that I talked a good deal more than Mr. Sachs did, because we explained to Mr. Kelso what was wanted; that Judge Utz wanted to see him, and he then told him, Judge Utz had already told him to meet him at eight o'clock and then it was that Mr. Kelso wanted to know what had occurred up here and I told him and he in turn told us of some things that had happened in his experience in other courts.

Q. Did you have any other purpose in going to Mr. Kelso's office that afternoon, other than to bear to him that message from Judge Utz?

A. None at all.

Q. Did you ever at any time employ Mr. Sachs either directly or indirectly or promise to employ him in any matters connected with this case whatever?

A. Now which part of the case do you mean?

Q. I mean this proceeding here, that is trying to wrest the property or trying to retain the property in the state court?

A. Oh no, not in any wise ; Mr. Sachs went in the nature of my friend and possibly my lawyer if it became necessary on the question of going before Judge Utz in my explanation of what had transpired at Indianapolis ; if that could be considered an employment, that is the only employment that ever existed between him and me in respect to the M. Zier & Company matters.

Q. Was that a matter of consideration? Of dollars and cents, or in what capacity?

A. Oh, no; pure friendship.

Q. Now you say that upon Thursday morning when you got there you went directly to the court house, and as I understood you Mr. Sachs was with you and you there found Mr. Utz and Kelso?

A. Yes sir.

Q. Did Mr. Sachs on that occasion say anything to Mr. Kelso or did Mr. Kelso make any request of him to the effect that he become the attorney for the receiver?

A. Not that I heard.

Q. That is, be his attorney whenever he should be appointed receiver instead of the Trust Company?

A. No; no such statement as that was made, and it seems to me that at some time, going across back home Mr. Sachs said to me that he was looking for no job on this side of the river,—talking about the State of Indiana; said that he had enough business of his own, and he wasn't in any wise interested.

Q. You did get a hearing, you and your attorney Mr. Sachs, in regard to the contempt matter before Judge Utz, did you?

A. You mean as to my contempt?

Q. Yes.

A. On Saturday.

Q. On Thursday at least his anger—

A. (Interrupting) I am not so sure that on Thursday I knew that the rule for contempt had been issued ; On Thursday morning I was filing my report and petition showing that I had been to Indianapolis and asking for an expunging of the record which I have spoken about.

Q. That was what I was getting at. Now I want you to explain what it was that Mr. Sachs was to represent you in, in that matter? In what respect was he to represent you on that issue?

A. Mr. Sachs was simply there to aid me, as far as he could, to accomplish what I was trying to do, which was to clear my skirts as far as possible of any blame in Jude Utz's eyes.

Q. You say you left there about a little before 12 o'clock? You were not there in the afternoon of Thursday?

A. Thursday afternoon I was sick.

Q. Did Mr. Sachs return with you?

A. Yes sir.

Q. Now at the interview there, Mr. Watts when Col. Jewett was making his talk before Judge Utz, and when Mr. Sachs perhaps had asked him some question in regard to the possession of the property, I believe you say that Mr. Kelso did ascertain by use of the telephone that the property had already been turned over?

A. Yes sir.

Q. To the receiver in bankruptcy?

A. Yes.

Q. Now what did Mr. Sachs if anything say at the time that that announcement was made to the gentlemen there in that party?

A. That was on Thursday morning?

Q. Yes sir.

A. My recollection is that when that occurred Mr. Sachs made the remark that that disposed of the matter.

Q. You were requested, together with Mr. Sachs, to return on Friday afterwards, by phone?

A. Well I only know that Mr. Sachs told me that Mr. Kelso told him that Judge Utz wanted us back there.

Q. You did return there?

A. Yes sir.

Q. Were you with Mr. Sachs all the time that you were there on Friday?

A. Friday?

Q. Yes.

A. Friday?

Q. Yes sir.

A. Oh no; not with Mr. Sachs all that time.

Q. Thursday, I mean; I said Friday; I meant Thursday?

A. I think we were, unless I may have gone to the Clerk's office, or to Jewett's office without him. We were substantially together the whole time, yes.

Q. Did you at any time, Mr. Watts, commencing with Wednesday, and down to the end of the transaction, or these conferences, at any time ever hear Mr. Sachs say anything looking to the retaking of the property from the receiver, or insisting that it could be done, or that it ought to be done, or aiding or abetting or advising the retaking of the property from the bankrupt receiver?

A. I don't recall anything that he said or did with that respect—in that respect—but I do recall—

The Court: Well you have answered the question. There is too much explanation; just answer the questions; it takes too much time to go further. You have answered the question that was put.

Q. During any of that time did you hear him advise against such action?

A. I don't remember that I heard him at any particular time advise against such action, but Judge Utz—

The Court: You are not asked what Judge Utz did. You are taking up too much time with explanations.

Q. Did you hear him at any time advise Judge Utz to desist from any further interference with the property?

A. No, but I heard Judge Utz—

The Court: You are not asked what Judge Utz did; answer the question; it takes to much time and makes too much record.

Q. I will ask you to state what Judge Utz said in regard to any advice Mr. Sachs had given him?

A. Judge Utz said that Mr. Sachs had said to him that if there was to be the appointment of a receiver for the purpose of taking that property, it would mean that he must call out his militia.

The court: That is hearsay, of the very worst kind.

Mr. Hester: I move to strike it out.

The Court: No, let it stand; let us get along.

Q. How long were you there Saturday, Mr. Watts?

A. I think we were there from about noon until probably five o'clock in the evening.

Q. Were you with Mr. Sachs during that entire time?

A. Well I don't recall. No, I wasn't with him during the entire time, no sir.

Q. What time? What part of the time, if any, were you away from him,—separated from him?

A. My recollection is that we got there shortly before noon and it was then, and shortly after noon that I was talking with the Jewetts about the bankruptcy proceedings.

Q. How long were you separated from him during those two times?

A. Not a great length of time. We lunched together.

Q. I believe you said you went from the train to lunch, did you, or not, or was that the day?

A. No, I think that must have been an error; we must have gotten over there shortly before noon, and that I saw the Jewetts that morning just before lunch, and just after lunch.

Q. Where did you leave Mr. Sachs at the time you went to see the Jewetts?

A. I declare I don't believe I can say, unless possibly he went to the court house and we met there.

Q. Did you at any time before you came into the court room here have any knowledge of the change of record in this case, that is an addition to the petition of advice and addition to the order that was made on that petition?

A. No, sir.

Q. When was it discovered first as far as you know?

A. Last night.

Q. By the Court: Did you ask him when he first learned of it.

Mr. Smith: Yes sir.

Q. Do you remember any discussion at any of these meetings wherein it was insisted by some that they could take the property under the Indiana Statute and that Mr. Sachs made some statement in regard thereto?

A. I believe that was on Thursday after Mr. Kelso had telephoned and ascertained that the property had been delivered over. We were seated there.—

The Court: Read the question Mr. Reporter.

The question was read.

The Court: If that is true say yes, if not not.

A. Yes sir.

Q. By Mr. Smith: Will you please give the statement and the time and place as near as you can fix it?

A. It was on Thursday morning that we have been talking about after Mr. Kelso had telephoned to Fred Sauer as the secretary of the Trust Co., the receiver, that by Mr. Kelso announced that he thought that property could be taken under an Indiana Statute, whereupon Mr. Sachs said that as far as he knew, he knew only Kentucky statutes and he knew nothing about that sort of thing. He had been asked some hypothetical questions which involved the matter about that time and was asked that question at that time. He said he knew nothing about the Indiana Statutes.

Cross-examined by Mr. LaFollette:

Q. When you first became connected with this proceeding, it was at the request of the agent of Ryerson & Son at your office. Did you know before that that there was probably to be a suit instituted?

A. In what way do you mean?

Q. I mean did you have information before you had the conversation with the agent of Ryerson & Son that there would probably be a suit instituted against Mr. Zier & Co.

A. No sir, not at all. My first knowledge of it was on Mr. Jackson's appearance.

Q. Before you commenced any proceeding you had a conference with Harry Jewett?

A. Yes sir.

Q. At whose suggestion did you do that?

A. Mr. Jackson suggested it, relating to me certain facts which he said had taken place in Chicago.

Q. After you had that information, did Henry Jewett come to your office?

A. Yes sir.

Q. Did you and he have a conference in regard to the situation and the financial condition of M. Zier & Co.?

A. Yes sir.

Q. Did you learn from Mr. Jackson that there had been recent payments on their claim of $3100?

A. I do not know that I learned it at that moment, but I did close to that time.

Q. Before you filed a petition for a receiver?

A. I think I did.

Q. Did you from any information you received, either from him or from Henry Jewett, learn that there had been other payments recently made by the company.

A. I think not.

Q. Did you know then there had been a payment made to Minnie Zier?

A. I am very sure I did not. And that the information here at this trial was my first knowledge of it.

Q. Did you and Henry Jewett talk together before you filed the petition in the Floyd Circuit Court about the probability of there being bankruptcy proceedings?

A. I don't think we did.

Q. You did know that under the condition of the concern that there might be such proceedings instituted by the creditors?

A. Certainly I did.

Q. You think that was not talked about?

A. I do not believe it was.

Q. Then after you filed the petition, you had arranged before that that Mr. Jewett would appear to the action without delay had you?

A. Yes sir, that was arranged. Mr. Jackson said the suit had to be brought and Mr. Jewett understood we were going to bring it and he agreed to appear.

Q. How soon after your conference with Mr. Jewett did you file the petition?

A. I should say our conference was held at 11 o'clock in the morning and the petition was filed about 3 o'clock in the afternoon.

Q. Had you had any conference with the Judge of the Floyd Circuit Court before you went over to file the petition?

A. I had not.

Q. On the filing of the petition and the appearance by Mr. Jewett the receiver was appointed without delay.

A. Yes sir.

Q. Following that you advised with the New Albany Trust Co. as its attorney?

A. I did.

Q. It was your advice as such attorney, was it, that the order was made on the 24th of January to enjoin creditors from taking any steps in any way except by intervention in that particular case?

A. It was.

Q. Did you prepare the order that was made as the result of that meeting?

A. I did.

Q. Had you at that time learned that there was likely to be bankrupt proceedings instituted?

A. On the 24th of January?

Q. Yes.

A. No sir.

Q. After there was a petition filed in bankruptcy how soon did you have notice of it?

A. I think I learned of it about the 12th or the 13th of the month. It was filed first on the 6th. I don't think any mention was made of that and then a supplemental pleading was filed on the 11th.

Q. And that you learned of on the 12th or 13th?

A. Yes sir I think so.

Q. Then on the 14th of February you went into the Floyd Circuit Court with a petition setting forth the facts that bankruptcy proceedings had been instituted and that an order had been issued and that a receiver had been appointed?

A. I did.

Q. Had you a copy of the order that had been made in the United States court then?

A. I don't think I had.

Q. You did know at that time that Mr. Connor had been appointed receiver by the District Court?

A. Yes sir.

Q. And Mr. Hester had filed in the Floyd Circuit Court a petition asking an order that the property that was then in the hands of the New Albany Trust Co. be turned over to Mr. Connor as receiver, had he not?

A. Yes sir.

By the Court:

Q. That petition contained a certified copy of the order of this court did it not?

A. I don't remember.

Mr. Miller: Mr. Hester says he has that petition.

Mr. Hester: They asked me about it this morning and I said that I had it in the office. It got mixed with Mr. Wilhoyt's papers and he sent it down to me.

By Mr. LaFollette:

Q. Anyhow that petition was filed in Floyd Circuit Court on Saturday which was the last day of that term?

A. Yes sir.

Q. You on the same day filed your petition which included the request of the Floyd Circuit Court that you be directed to proceed to Indianapolis and present the matter of the jurisdiction of the Court here and get an order if possible to withdraw the order that had been made in regard to Mr. Connor taking the property.

A. To modify it, yes.

Q. Among other things you asked at that time that the Floyd Circuit Court issue a decree and order restraining Mr. Connor, and all other persons, the petitioning creditors in the bankruptcy court and so forth, from interfering with that property of M. Zier & Co.? Did you not?

The Court: And the United States marshal.

Q. Including the United States marshal, Henry C. Pettit?

A. Yes sir.

Q. You had action taken on that petition on that day did you not?

A. Yes sir.

Q. You also, did you not, as attorney for the New Albany Trust Co., receiver, had the court continue until the next term the petition which had been filed by Mr. Connor as receiver of this court?

A. I did not know that I did do that.

Q. Do you know that there was such action taken on that?

A. Yes sir.

Q. Did you as attorney in the case, having the other order made, did you take any active part, any steps, in regard to that order?

A. Let me answer that this way. That I asked Mr. Hester to take a position with respect to whether his appearance by his petition was general or special—general or limited, and he refused to do it saying that the paper showed for itself what appearance it was. I left there shortly after Judge Utz went off the bench and then went on to my office and came to Indianapolis without knowing anything about what order was entered.

Q. You as attorney for the Trust Co., and Mr. Hester as attorney for the receiver Connor as to what kind of an appearance he was making?

A. Yes sir.

Q. In discussing that, did you take any position in regard to what the court should on the petition, as to what order he should make?

A. I don't think I did, because I did not know what Mr. Hester was trying to do.

Q. You knew that he was asking to have the property turned over?

A. Yes sir.

Q. That was what he was trying to do?

A. Oh yes.

By the Court:

Q. What difference did it make whether it was a special of a general appearance?

A. I thought it made this: that it was a question whether or not he was within that jurisdiction and would be bound by the orders of that court generally made in the disposition of the estate, in the settlement of the contracts the receiver had entered into, the payment of various costs, expenses, commissions, fees, and matters of that character before the corpus of the estate was to be turned over, if it was to be turned over, if it was turned over. On appearance for the simply purpose of taking the property I conceived that probably those questions might not be allowed to be tried.

Q. What other purpose was set forth in that petition except to ask Judge Utz to order his receiver to turn the property over to the receiver of this court? Was there anything else in that petition?

A. I read it very hurriedly and I do not know, I cannot say.

Q. Was it from Mr. Watts' petition? securing that order? that you read the language to Mr. Kelso when he was on the stand, Mr. Smith.

Mr. Smith: Yes sir that was the order made on the petition.

The court: Was it the order or the petition?

Mr. Smith: I read the style of the petition and then I read the order.

The court: Have you that there?

Mr. Fairleigh: There are two separate orders. One on Mr. Hester's petition, made in advance of the filing of the petition of the New Albany Trust Company.

The Court: I want that extract that Mr. Smith read to Mr. Kelso, I want to see that from the order itself or the petition, or both, but proceed with the examination.

By Mr. LaFollette:

Q. Did you not at that time desire to have Mr. Hester state to the court that he was making a general appearance in that court?

A. I did, or at least I wanted him to take a position and he was refusing to do it. If he had made a general appearance and so stated so that there could be no question about it, I should not have come to Indianapolis.

Q. By the Court: Was there anything in the petition or in the proceedings there to indicate a special appearance—was there any limitation whatever in it?

A. The petition was peculiarly worded. I wish it were here. Your Honor has called for it several times and I have been anxious to get it and have asked for it.

Mr. Hester: Whom have you asked?

A. The clerk.

Q. Did you ever ask me?

A. My brother asked you for it.

Q. When?

A. Yesterday.

Q. But before that?

By Mr. LaFollette:

Q. You had in mind at the time that if he came into that court and made a request of the court on a general appearance for any order, that he would thereupon be bound by whatever order was made?

A. I did indeed.

Q. Why did you say now that if he had stated that he was making a general appearance you would not have come to Indianapolis?

A. For the reason that I had little time to think about the matter at all. I had already arranged with Judge Anderson to appear here and I had a great deal to do I could not spend time in New Albany when Mr. Hester would not take any position with respect to his appearance and I had to get to work and get to Indianapolis, which I did.

Q. By the Court. You drew the order for Judge Utz on that day, the 14th, did you not?

A. I did.

Mr. Farleigh: Which order?

The Court: The order on his petition.

The question was read to the witness.

A. Yes, sir.

Q. By the court. In that order this is said: "And the said receiver" that is the receiver of that court, "is hereby ordered and directed through its attorney, to proceed to Indianapolis, Indiana, and there by a limited appearance and by protestation against appearance only, by petition upon such appearance only lay before said District Court of the United States for the District of Indiana the facts with regard to the matters herein, said injunction, restraining order, and said estoppels and to suggest to said court the orders of this court and the fact that had it been fullly informed, as is believed by this court, its order with respect to the assets herein would at the most have been a direction to make an application to this court at the proper time and in the proper

way for the delivery of the said assets to such district courts receiver or trustee after proper disposition and settlement of the matters herein. I wish you would state when the proper time and how the proper way would have been for the receiver of this court to apply to that court for such order?

A. I can only give your Honor my opinion.

The Court: That is what I want to know.

A. My opinion as gathered from the various cases in the Supreme Court.—

The Court: I don't care where you gathered it, just tell us your opinion.

A. My opinion is that Mr. Hester for the receiver should have applied by petition in a general appearance asking for that property and proposing to be bound by the orders of that court with respect thereto.

Q. That was your idea?

A. Yes, your Honor please. One moment. As the Supreme Court of the United had decided.—

Q. I didn't ask you what the Supreme Court of the United States had decided. Strike that out. I want to know your opinion as to what was the proper time and way to do that. I am not asking for your authorities.

A. Upon the hearing of that petition, if it had been denied an appeal, would have laid, to the Court of Appeals or the Appellate Court of the State of Indiana and then because it was a bankruptcy matter to the Supreme Court of the United States, that was my opinion.

Q. So your purpose was to prevent the getting of possession of that property by the receiver of this court?

A. No.

Q. Your purpose was to require the receiver of this court to go around through the state Supreme Court through the United States Supreme Court to get his rights.

A. No. May I now explain in answer to those two questions?

Q. You may if you want to.

A. My purpose, as in my opinion I thought it ought to be done, was to have simply a trial of the question of whether the creditors had bound themselves by what had been done in the State court, whether the receiver could take the property now, because of their being bound and if the receiver could take the property then by reason of assent and acquiescence, that the contracts, fees, commissions and all those matters be disposed of by the Floyd Circuit Court.

Q. Then your opinion as a lawyer was if the petitioning creditors in the United States District Court had by some conduct elsewhere estopped themselves from proceeding here, you proposed to try that question in the Floyd Circuit Court, did you?

A. I do not know that I did propose that.

By Mr. LaFollette:

Q. Did you know before you left the court on that day that the petition filed by Mr. Hester to have the property turned over to the receiver of this court had been continued to the next term of the court, which did not convene until the 9th of March?

A. No sir, I don't think I did. I don't think after Mr. Hester and I got through with our arguments over there that I knew anything further about that petition.

Q. As attorney for the receiver of the state court, did you go away without knowing what was being done by the state court?

A. Yes sir, because I was anxious to get up my pleadings to come here to Indianapolis and I had no time for anything else.

Q. You left before the court adjourned Saturday?

A. Yes sir.

Q. The Monday following you came to Indianapolis?

A. I came on Sunday.

Q. The Monday following you were here and also the Tuesday?

A. Yes sir.

Q. Argued the question and reached the conclusion and went back to New Albany on the evening of the 17th.

A. Yes sir.

Q. Or rather to Louisville that evening, you did not go to New Albany?

A. No sir, I went to Louisville.

Q. When did you next go to New Albany?

A. Wednesday afternoon following.

Q. Had you had any notice from Judge Utz or any one at New Albany as to the condition of affairs there before Wednesday afternoon?

A. No sir.

Q. I believe that you stated that you took Mr. D. A. Sachs to New Albany with you on Wednesday afternoon?

A. Yes sir.

Q. What did you have him go over there with you for if you had not heard anything from there and no charge was against you and you had come up here and performed your duties as fully as you could for the New Albany Trust Company and in good faith reached a conclusion and gone back home prepared to present the matter to the Floyd Circuit Court?

A. I don't think I have admitted that I reached any such conclusion.

Q. Did you not say when you left here that you would turn the property over?

A. I did.

Q. Did you do that without reaching a conclusion that you would?

A. No sir, my conclusion was that I would.

Q. If you had reached that conclusion that you would did you not in fact feel that you had presented the matter here as fully and fairly as you could?

A. I do not know that I can answer that question, the way you want it answered.

The Court: He don't want it answered anyway; just tell the truth.

A. The truth about the matter was this: I agreed to turn it over. So far as arguing it fully and freely, Judge Anderson accorded me a good deal of time, but I did not get over all of my authorities before reaching the end of my argument because of the charge of discourtesy and because my client said he would deliver over the property, and I said I would advise its delivery.

By Mr. LaFollette:

Q. There was nothing further for you to do on that proposition if your client had reached the conclusion that it would turn over the property and so notified you, there was nothing further for you to say was there?

A. I thought there was a good deal for me to say to Judge Utz, I thought there was and I did say it.

Q. Was there any reason why you should have a lawyer go over to help you say it?

A. Yes sir, in my opinion there was.

Q. What was it?

A. I simply wanted Mr. Sachs to go over there and as far as he could help square me with Judge Utz about the matter.

The Court: What day was that you went over?

A. Wednesday.

Q. He was there Thursday, Mr. Sachs was?

A. Yes sir.

Q. And Friday?

A. Yes sir.

Q. And Saturday?

A. Yes sir.

Q. How long did you expect it would take him to square it with Judge Utz?

A. I don't know how long, but in the meantime the rule had been issued.

Q. Not until Saturday?

A. Not the rule, but the rule down there against me.

By Mr. LaFollette:

Q. What was there in the situation that induced you to think that you would have trouble with Judge Utz because

the order that had previously been made by the United States District Court was decided after your presentation of the matter, which still remained in force?

A. There was this in the situation: That the order directing the receiver and me as its attorney to come to Indianapolis directed us to come by limited appearance and protestation only, but not for a general appearance and only for a limited appearance. Mr. Jewett as vice president of the receiver, said on the floor of the court room, that he would give up the property. I, as its attorney, and as an officer of Judge Utz's court, I had been sworn in during the term, said I would advise it. There was that in the situation to make me feel very uncomfortable. I felt that I had exceeded the authority that Judge Utz had sent me up here with.

Q. If you were directed by Judge Utz to come up here and present the matter to the court, did you not understand that that carried with it the matter of getting a decision upon the proposition according to the judgment of this court?

A. No; I did not.

Q. Did you expect to come up here and get a particular kind of a decision, or go back and have trouble with Judge Utz about it?

A. No sir I did not.

Q. Didn't you expect the matter that had been presented regularly in the court had been presented by Judge Utz without severe criticism of you?

A. If we had stood—

The Court: Answer the question.

A. I expected no criticism from Judge Utz if I followed his instructions.

Q. There had been no charge made against you that you knew of up to that time?

A. No sir.

Q. When you went over on Wednesday evening, did you immediately go before Judge Utz in company with Mr. Sachs?

A. Yes sir.

Q. Was there any action taken that evening by Judge Utz in answer to your statement?

A. No sir.

Q. Did Mr. Sachs have any duties to perform in your behalf that evening before the Judge?

A. No sir, except to say,—well he spoke to Judge Utz about the situation—

The Court: You have answered the question.

Q. There was nothing done there that evening?

A. No sir.

Q. How did it come that following that you went over to Mr. Kelso's office?

A. Judge Utz wanted a conference of the attorneys in the case, because—

Q. I don't care about the because. He wanted a conference of the attorneys?

A. Yes sir.

Q. What did you go over to Mr. Kelso's office for?

A. To ask Mr. Kelso to meet Judge Utz in the morning at Judge Utz's request.

Q. Is not there a telephone in Judge Utz's room?

A. I believe there is?

Q. Is not there a telephone in Mr. Kelso's room?

A. Yes sir.

Q. If he wanted Mr. Kelso over there next morning, why did he not telephone to him?

A. He evidently had telephoned him when we arrived.

Q. So that it could not be possible that you went over to bear a message to Mr. Kelso that he wanted him in the court room next morning?

A. It was exactly possible.

Q. And he had already been notified by telephone when you got there?

A. He told us when we got there.

Q. How long did you remain at Mr. Kelso's office and what matters were talked of?

A. We remained at Mr. Kelso's office, I should ssy, in the neighborhood of half an hour.

Q. You mean you and Mr. Sachs.

A. Yes sir.

Q. Did you talk to Mr. Kelso about his having any connection with the matter in the event of the Trust Co. resigning.

A. No sir.

Q. Do you know why you went over there to explain to him your business at Indianapolis and the result of the efforts to hold the property.

A. I know why I went over there.

Q. You say you went over there to tell him to come to Judge Utz's office next morning?

A. Yes sir.

Q. That you say is the only purpose of going there?

A. Exactly so.

Q. But after you talked to him about that, you remained something like a half an hour?

A. I think it was about an half an hour in all that we were there.

Q. Then your remaining there and his conversation had nothing to do with his going to the room of Judge Utz next morning?

A. Not at all.

Q. Why was it that the question came up that was discussed with Mr. Kelso about the removing or the resigning of the receiver in the state court?

A. I have not said any such thing was discussed.

Q. What did you talk about over there?

A. Mr. Kelso asked what had transpired? And I told him and he told us what he had done in one or two instances in Federal Courts in which he had appeared.

Q. On the next morning, you say you went back to New Albany, did you not?

A. Yes sir.

Q. For what purpose did D. A. Sachs go back with you next morning?

A. Judge Utz was in such a humor when we left there, and he had requested me to come back and I believe also had requested Mr. Sachs to come back and we went.

Q. Had Mr. Sachs made an appearance for you?

A. No, sir.

Q. If he had made no appearance for you on Wednesday before, and I believe you said awhile ago that he had never had any connection with the case in any way, why was he to go back or be ordered back if he was not connected with the case in any manner and had not entered any appearance for you?

A. I don't think he was ordered back in any sense, nor had he made any appearance for me in the sense of an appearance. He was talking in my behalf with Judge Utz.

Q. Why did he go back on the next morning?

A. He went not only because Judge Utz requested it, but because I requested it.

Q. Was he still going back to appear for you?

A. Yes, sir.

Q. That was his purpose was it?

A. Yes, sir.

Q. Now on the next morning, Thursday, what did he do then.

A. Thursday morning was the morning on which I filed—

The Court: The question is what did he do.

A. We went over there together, I do not remember anything in particular that Mr. Sachs did that morning. He was asked some hypothetical questions were put to him and he was asked his opinion.

Q. What about?

A. This that and the other matter which would involve questions in this case.

Q. Was that asked as a lawyer, simply present without being connected with case?

A. Yes sir.

Q. What did he do on Thursday for you as your attorney?

A. I don't think he did anything for me except that he was with me.

Q. What was done on Thursday, either by you or him?

A. On Thursday I filed a report and petition of the Trust Co., signed by myself—

The Court: You were not asked what it showed.

Q. What action did Judge Utz take upon that petition?

A. He entered an order denying the prayer of that petition and also an order citing me to appear on the following Saturday to appear for contempt of his court.

Q. Had the order been made against the Trust Co. charging that it was in contempt also?

A. The same kind of order was made, I think on the same day when the Trust Company filed its separate pleading through Mr. Jewett.

Q. Was the statement made by Judge Utz that the Trust Co. was in contempt before he said anything about you being in contempt?

A. I don't remember that that was so.

Q. Did it not occur like this? That he said in regard to the report that was filed by the Trust Co. that he thought it was in contempt of his court in taking the steps it had taken and you said to the court if you make that order against the Trust Company you should make the same order against me?

A. I don't think I did.

Q. By the Court: You don't think you did. What is the fact about it?

A. I have answered the fact—I know.

By Mr. LaFollette:

Q. That order was made against you without any suggestion on your part?

A. Yes sir.

Q. You remained in New Albany, did you not?

A. No sir.

Q. What time did you leave there?

A. About twelve o'clock.

Q. Did Mr. Sachs go back with you?

A. Yes sir.

Q. Had there been any conclusion reached at the time you left there on Thursday as to the appointment of another receiver in lieu of the Trust Company?

A. No sir, I don't think there had been on Thursday.

Q. Up to the time you left there on Thursday, Mr. D. A. Sachs had made no appearance for you before Judge Utz, no entry of any kind had been made showing his appearance?

A. No sir.

Q. No action had been taken by him as your attorney in any matter before the judge?

A. No sir..

Q. And you went over in his company at noon of that day?

A. Yes sir.

Q. The order to show cause why you should not be punished for contempt was set for Saturday afternoon at three o'clock?

A. Yes sir.

Q. Friday you went back there?

A. Yes sir.

Q. And Mr. Sachs went with you?

A. Yes sir.

Q. Tell the Court what occasion there was for Mr. Sachs to go back there when you were not ordered to be there until Saturday afternoon?

A. The occasion was this, as appears from the record, the rule against me was issued on Thursday, and Mr. Sachs reported to me that Mr. Kelso telephoned him Thursday afternoon thas Judge Utz wanted us over there Friday morning.

Q. Who telephoned you?

A. Mr. Sachs reported to me that Mr. Kelso telephoned him that Judge Utz wanted Mr. Sachs and me over there on Friday. And when I went over there on Friday I was served with the rule.

Q. Did you have any business over there on Friday other than to go over to be served with the rule?

A. I had other business on Friday. I did not go over for the purpose of being served with the rule?

Q. Did you have any other business before Judge Utz that day in connection with this case?

A. On Friday?

Q. On Friday.

A. Friday was what date?

Q. The 20th.

A. The question is did I have any business on Friday with Judge Utz in this matter?

Q. Yes.

A. I did.

Q. What was it?

A. In the afternoon I appeared before him as did also the New Albany Trust Company through Mr. Jewett, receiver,

with respect to the petition which had been filed for the removal of the receiver.

Q. Was the receiver removed by order of court that day?

A. Yes sir. And his bond was fixed.

Q. I say the receiver removed?

A. Yes sir.

Q. By the Court: Who presented that petition for removal?

A. Mr. Kelso, I think.

Q. Was that petition, read here today signed by Mr. Sachs?

A. Yes sir.

By Mr. LaFollette:

Q. Did you know that Mr. Sachs had signed the petition and verified it on his own oath to have the receiver removed and another appointed?

A. No sir, I did not.

Q. Had he said nothing to you about that?

A. No sir.

Q. Had you not learned by reason of your visits over to Mr. Kelso's office and the fact that Mr. Sachs was at Mr. Kelso's office, that he was joining with Mr. Kelso in the preparation of papers to be presented to Judge Utz?

A. No sir I had not.

Q. Did you not hear anything said at all up to that time about Mr. Kelso taking the appointment as receiver instead of the Trust Co.?

A. I don't think I heard that until Friday.

Q. You think that neither Wednesday evening or Thursday you had received any knowledge or notice or heard the matter talked of that Mr. Kelso was to be appointed after the discharge of the Trust Co.?

A. I am very positive I did not know anything of it or hear anything of it on Wednesday and I am quite certain that I did not on Thursday.

Q. What time on Friday did you hear it?

A. I should say along about three o'clock in the afternoon?

Q. Did you know then on that afternoon that a petition had been filed before Judge Utz for the removal of the Trust Company and that it had been removed and that Mr. Kelso was appointed and his bond fixed at $30,000, and that he had qualified as such receiver and that the orders had been formulated and a demand upon Mr. Connor for the property, his refusal anticipated and the orders prepared for a request that a writ issue to the sheriff directing him to take the property and turn it over to Mr. Kelso.

A. Some of those things I knew about, not all of them.

Q. Which of them did you know about?

A. By Mr. Miller: I submit that that is too long a question and that it is not proper to put such a question to the witness. I think the question is entirely too long.

The Court: I think it is myself.

Q. I thought I would cover the whole thing by one question, but I can cut it up. Did you know of the appointment of Mr. Kelso as receiver?

A. Yes sir.

Q. Did you know that his bond was fixed at $30,000?

A. Yes sir.

Q. And that it was given?

A. Yes sir.

Q. Did you hear any talk about him giving that much bond?

A. I did.

Q. Who was present when that was being talked about?

A. Mr. Kelso, Judge Utz, David Sachs, Joe Sachs, and I.

Q. Did you know of the order being prepared directing him to make demand for the property on Mr. Connor receiver?

A. No sir I did not.

Q. Did you know that Mr. D. A. Sachs had signed a petition for the appointment of Mr. Kelso as receiver, upon which he was appointed?

A. I don't think, I knew it at that time.

Q. Did you know that Mr. Kelso stated to the judge that he could not be a receiver while he was appearing of record as attorney for the creditors in this case?

A. No sir, I don't think I knew that.

Q. Did you know that in answer to a statement of that kind Judge Utz directed that he withdraw as counsel for certain creditors and that an arrangement was made with Mr. D. A Sachs to appear for the creditors instead of Kelso?

A. No sir.

Q. Did you know that the order was made and attached to the entry of February 14th making it appear that Mr. Kelso withdrew as attorney for certain parties as of that date?

A. I infer you mean as of the times you have been speaking about?

Q. Yes, sir.

A. No.

Q. You did not know that until you came up here?

A. Only last night.

Q. Yet you say that D. A. Sachs, your very close friend, and an attorney living in Louisville came over—

By Mr. Miller: I submit that as argument.

The Court: I think it is too.

Q. There was no notice given you by Mr. Sachs that he was appearing—

A. Yes. That refreshes my recollection. I was served with the notice on Friday at noon that the United States Tu—— As counsel for Ryerson & Son, I was served with notice that a petition would be filed at three o'clock that afternoon.

Q. For what purpose?

A. I do not remember whether the notice itself expressed in detail the purpose but it was substantially that there would be a motion to remove the present Receiver and appoint another in its stead.

Q. And that notice that came to you indicated that it was on the petition of the United States Tube Co.?

A. Yes, sir.

Q. Represented by D. A. Sachs?

A. That I do not remember. I do not remember how that note was signed.

Q. On receiving that notice did you examine what kind of proceedings were filed?

A. No sir—I did not. I can explain why I did not.

The Court: You have answered the question.

Q. Did you hear nothing at all said about the matter of the expense of this Receivership on the part of Mr. Kelso at any of those times when you were present in his office?

A. I did not, that is, so far as my own connection was concerned.

Q. Did you hear anything said about his not wanting to incur any liability in it?

A. No sir—I did not.

Q. Did you hear any discussion in the office about the possibilities of his being in contempt of the United States Court if he took that position and sought to retain the property?

A. No sir—I did not.

Q. Did you hear anything said that if there was any punishment inflicted, it would not likely be anything more than a fine?

A. No, sir—I did not.

Q. Were the statements that were made at Louisville, the first you heard about there being a call on you for expenses.

A. Yes, sir.

Q. Had Mr. Sachs said anything to you about the expenses incident to it before that?

A. Oh no, not at all.

Q. I think you said in your original examination that there was some conversation between you and D. A. Sachs on your way from Louisville to New Albany about his employment over there that he was not looking for a job on this side of the river?

A. Yes, sir.

Q. When was that?

A. I could not attempt to fix the specific day but it was some one of those days. We were going home and he said that Mr. Kelso wanted to employ him as attorney and he was not looking for a job over the river and that he had told him they had a bar over there &c.

Q. Did he then say whether or not he had taken the employment?

A. I would not undertake to repeat his exact words?

Q. By the Court. Did he say anything that night that he had taken the employment?

A. No, sir; he said to the contrary.

Q. Did he at any time tell you that he had taken the employment?

A. No, sir; at no tine.

Q. Did you learn at any time that he had appeared and filed papers for Mr. Kelso receiver?

A. Only since that thing occurred.

Q. On the Monday following the notice that reached you about coming here when you had a conversation with Mr. Sachs and Judge Utz was present, did you hear the statement by Mr. Sachs that he would not come up here or rather that he would go somewhere else in preference because he did not want to testify against you?

A. He made no such statement.

Q. In your presence?

A. No, sir.

Q. You did not hear any such statement?

A. I am sure he made no such statement while I was there.

Q. Did Judge Utz come over there at the request of either you or Mr. Sachs or on his own motion?

A. On his own motion if the report was correct and I have no reason to doubt it.

Q. Do you know for what purpose he was there?

A. No, sir—I do not.

Q. What part did he take in the consideration of the question at the conference—what did he say to you and Mr. Sachs about it?

A. He was very much disturbed at what had occurred and was to a large extent asking questions, not participating in the question of what sort of response was to be prepared but discussing the probable settlement of the whole matter by Mr. Kelso coming to Indianapolis and simply surrendering to this court by leave of Judge Utz's court.

Q. By the Court: Who was discussing that?

A. Judge Utz.

Q. By Mr. LaFollette: That is on his coming up here and surrendering the property on his leave?

A. Yes, sir; that was one of the questions discussed in which Judge Utz took part.

Q. What did he say about giving such leave?

A. I do not remember now who suggested it but it was suggested that Mr. Kelso might possibly dispose of the whole matter—the whole contempt proceedings by simply surrendering and surrendering with the leave of the Floyd Circuit Court. It was further suggested that Mr. Hester should be seen with respect to that. Mr. Judge Utz thought that Mr. Stotsenberg might be seen with regard to it but declined to have anything to say to Mr. Hester about it.

Q. By the Court: When and where was this?

A. In Mr. Sachs' office on Monday.

Q. Different methods were talked of of disposing of the matter without a response other than by the act of Kelso?

A. Well, yes. The matter was discussed from every side.

Q. There was something said during your examination about an order made by this court on the 17th which you say you did not know of?

A. Yes, sir.

Q. You did know of the order which was issued prior to that time the enforcement of which you had asked to have delayed?

A. Yes sir.

Q. When you went back down there you told them that order was still in force?

A. Yes sir, my report shows that.

Q. You knew if an act in the way of taking the property from the receiver was committed it would be such a matter of interfering with the orders of this court relating to that order as though the like order was made on the 17th?

A. That is a question of law which I would not like to answer.

By the Court: Do you say you cannot answer it?

A. I respectfully submit that that is a question of law which I ought not to be made to answer.

The Court: I will not require you to answer it.

By Mr. Miller:

Q. You were asked by Mr. La Follete with reference to the commencement of that suit down there by Ryerson & Son. A summons was issued in that suit, was there not, at the time it was commenced?

A. Yes sir.

Q. And placed in the hands of the sheriff?

A. Yes sir.

Q. You were asked a little bit ago by Mr. LaFollette whether you knew of the preparation and filing of any

papers by Mr. Sachs as the attorney for Kelso, receiver? And you stated that you did not know of it at the time, but only knew as you have learned since. I will ask you if you have now any knowledge that Mr. Sachs filed any paper for Mr. Kelso at all?

A. Do you mean in the sense of handling it physically?

Q. Presenting it in court?

A. No sir; I have no knowledge of it.

Q. You simply have been informed that he prepared a paper or rather signed it?

A. That is what I had reference to when I made that answer.

Q. Is your information that he ever did any thing more than to sign it and swear to it?

A. No sir; that is all.

Q. Have you any knowledge at any time of Mr. Sachs acting or Mr. Kelso as receiver other than what you have stated, namely signing and swearing to that paper?

A. No sir.

Q. In all the times that you met Mr. Kelso and Mr. Sachs together, please state to the court if you ever heard Kelso say anything to Sachs as his attorney?

A. No sir.

Q. And in all those times, did you ever hear Mr. Sachs say anything to Mr. Kelso implying that he was his attorney?

A. No sir.

Q. As receiver of course I am asking. When did you first learn of have any intimation that Kelso claimed that Mr. Sachs was ever his attorney as receiver in this matter?

A. I do not believe I could fix that date.

Q. Did you have any such notice or knowledge prior to the commencement of some of these contempt proceedings?

A. I think not.

Q. You say you think not. Is that your best recollection?

A. That is my best recollection.

Q. Did you ever hear that Mr. Kelso ever made such claim until after you know that Mr. Sachs' name had been included in this citation from the Federal Court?

A. My best recollection is I did not.

Q. Did you ever know that any such suggestion had been made by Judge Utz until after the same time?

A. No sir.

By the Court:

Q. Is there any other firm known as W. W. and J. R. Watts in Louisville?

A. No sir.

Q. Did your fact of W. W. Watts and J. R. Watts at any time represent the petitioning creditors against the John A. Etheridge Furniture Co.?

A. Yes sir.

Q. You represented the petitioning creditors?

A. Yes sir.

Q. Judge Barr is the judge of what District court?

A. He was judge of the District court of Kentucky?

Q. Prior to Judge Evans' appointment?

A. Yes sir.

Q. I will ask you if you as one of the members of W. W. and J. R. Watts appeared before Judge Barr while he was on the bench at Louisville, in the matter of the John A. Etheridge Furniture Co.?

A. I did.

Q. The question there was whether or not the court after the filing of an involuntary petition and a prayer for an adjudication could appoint a receiver?

A. Yes sir.

Q. You for the petitioning creditors took the ground that the court in that case should appoint?

A. I did.

Q. And you procured that sort of a decision in your favor?

A. Yes sir.

Q. And the receiver was appointed?

A. Yes sir.

Q. And Judge Barr in that decision rendered in behalf of your client, used this language: "As congress has been empowered by the Federal constitution to pass a bankrupt law, it may be assumed, we think, as true, that the jurisdiction of the bankrupt court is exclusive, and must be for so far as it is necessary to adjudicate that the party is bankrupt and settle and liquidate the estate of the bankrupt thus declared; and that this jurisdiction cannot be concurrent with that of the State courts, but must be exclusive, and that the insolvent laws of the state are suspended after the passage of the bankrupt act. Sub-section 3 of Section 71 provides: "Proceedings commenced under said insolvent law before the passage of this act shall not be affected by it." This would clearly indicate that proceedings commenced after the passage of the bankrupt act cannot be effectual to prevent the administration of the bankrupt estate in bankruptcy. To allow the bankrupt to select the trustee to administer upon his estate instead of the creditors as provided in the bankrupt law, or to allow the State court to take jurisdiction of the estate of the bankrupt and administer and distribute it, would effectually destroy the efficiency

of any bankrupt act that might be enacted by congress and thus effectually destroy the power granted to congress to pass a bankrupt act" You read that opinion, after it was rendered?

A. Yes sir, repeatedly.

Q. You knew that when you appeared in this court by special and limited appearance to be the jurisdiction of this court?

A. Yes sir, but I would—

Q. Answer my question. You knew that when you stood in the chambers of this court and insisted that this court had no power to appoint a receiver and that the receiver of this court had no power to interfere down there, because the state court had taken jurisdiction first? You knew it then?

A. Yes sir.

Q. Now you can make any explanation you wish?

A. I have changed my mind about the law since that decision was rendered?

Q. You are against that decision?

A. Very much so.

Q. You now think that Judge Barr did not decide it right?

A. I think under the particular facts of that case he did.

Q. You think that decision was right?

A. Because Mr. Hyatt came in and prayed that he be made receiver and Judge Barr granted that prayer.

Q. Who was he?

A. The assignee of the state court.

Q. So that if this court had appointed the New Albany Trust Company instead of Mr. Connor, you think it would have been proper?

A. No sir, I do not mean that.

Q. I won't ask you to explain what you mean, but you may explain if you want to.

A. I would like to make this explanation, that since the decision in the Etheridge case there have been decided by the Supreme Court of the United States and by divers Circuit Courts of Appeals, the Burdees case, Bryan v. Burnheimer, the Nugent case, the Comingore case, Pickens v. Dent, In re Seiboldt, and such cases and my mind has undergone a complete change for what it was at the time when that opinion was rendered, which was early in the beginning of the present bankruptcy law.

Q. Tell what single one of those cases overturns the doctrine Judge Barr announced and which I have just read. Name the case. I have heard three days of argument on this matter and I never have heard the case announced and I would like to hear you announce it.

A. I think the principles--

Q. Just name the case.

A. All of the cases I have mentioned taken together.

Q. Name one.

A. The Comingore case for one.

Q. That is your judgment about it?

A. That is my opinion. In addition to which I say that the other cases with the opinion of the Supreme Court in Eyster v. Gaff and the old cases under the old law.

Q. Can you name one single case decided by the Supreme Court of the United States or by any of the Federal courts holding contrary to the doctrine that I read to you from Judge Barr that the bankrupt law is exclusive and suspends the operation of the state insolvency laws? If you can, I shall be pleased to have you name the case.

A. I want to say Judge that I won't undertake to name any single case which says the jurisdiction is not exclusive in bankruptcy matters.

Q. You won't undertake that?

A. No sir. I insist that that is the law.

Q. You will not undertake to furnish any case which holds a contrary doctrine, that when the bankrupt act is passed—at least whenever any proceedings are commenced under it, they suspend all proceedings under the state's insolvency laws. Can you name any case holding the contrary of that doctrine? I want the name of the case.

A. I think the Comingore case, the principles in the Nugent case and the principles in all the cases. I do not believe your Honor understands my idea. If you would let me explain it I would like to do it.

Q. I heard you the other day. You have not changed your ideas since the 15th or 16th of February?

A. Not at all.

Q. Did you call my attention to this case by Judge Barr when you were here presenting this case?

A. I don't think I did.

Q. Now you may explain your view of the law if you wish.

A. My idea of it is that you should contradistinguish between the jurisdiction of the bankrupt, the person, and his debts and his creditors on the one hand and his assets, which may be in the custody of another court on the other hand. I admit and insist and have always insisted that in bankruptcy, take the McKee case, before Judge Gregory in Kentucky,—

Q. Just state your opinion.

A. That the jurisdiction of the bankrupt is here, but it may be a very grave question as to whether the jurisdiction over his property is here.

Q. That is your view of it?

A. Yes sir.

Q. But you say upon your oath that in your opinion the jurisdiction of the bankrupt was in this court, but that the jurisdiction of his estate was not here?

A. Under the present circumstances, that is my opinion.

Q. By Mr. Hester: You said that Mr. Kelso represented to you in a conversation he had had with me on the 22nd, Sunday afternoon, he said that I said that the man Judge Anderson was after was yourself?

A. Yes sir.

Q. Did not Mr. Kelso say to you on that occasion that he inferred from what I said that Judge Anderson was not feeling very kindly on account of what you had done, instead of what you told the court awhile ago?

A. No sir, I don't think he said inferred. He took the positive position that Judge Anderson was after me. That is what alarmed me.

Q. Where were you when he said that?

A. In Mr. Sachs' office.

Q. When was that?

A. On Monday, both morning and afternoon, I think.

Q. In Mr. Sachs' office on Monday morning and afternoon February 23rd?

A. Whatever Monday was.

Q. In addition to what has been said, I would like to make this further explanation; a good deal has been said about the payment of $3000 and odd to Ryerson and Son within a few days of the institution of these bankruptcy proceedings.

A. I wish to say that on consideration of that matter I advised my client that as to a part—either all or nearly all of that $3100, there was no preference and when the proper time came defense on that basis will be made. In my opinion under the circumstances there was no preference.

By the Court:

Q. That is because of the recent amendment to the act?

A. No sir, that did not have anything to do with it, because we discussed that along in December, the 30th, and the amendment to the act was not passed until in February.

Q. Then you discussed whether this was a preference under the bankrupt statute about December 30th?

A. Yes sir.

Q. In other words, the purpose of the institution of that suit in the Floyd Circuit Court was to head off any bankruptcy proceedings?

A. Not at all. The purpose of the institution of that suit was to keep that plant as a going concern, as far as

might be, with a view to paying out as far as possible and possibly having a good settlement.

By Mr. Hester:

Q. If that be the case, why did not M. Zier & Co. under your advice and that of Mr. Jewett make a general assignment for the benefit of creditors instead of a receiver?

A. We did not discuss that.

Q. Could not the assignee under a general assignment for the benefit of creditors operate the plant just the same?

A. I doubt if he could.

Q. Could not the receiver appointed by the bankruptcy court operate the plant just the same as the receiver of the state court?

A. Yes, provided you can always get the judge to give the power to operate and I have had a great deal of trouble in things of that sort.

Q. Is it not supposed to be that the judge will do what is best for the interests of the creditors?

A. Yes sir, but I thought it was very much easier to get a receiver in the state court.

By the Court:

Q. You had no trouble in getting what you wanted from Judge Utz?

A. No trouble at all.

By Mr. Miller:

Q. You understood that the receivership in a bankruptcy case in the Federal Court—that the receiver is a mere temporary custodian of the property?

A. Ordinarily so.

Q. It is supposed to anticipate the appointment of a trustee or assignee?

A. Yes sir.

By the Court:

Q. If I understand you, your view of the law as recently determined, now is that this court had jurisdiction of the bankrupt and of the creditors, but may not have jurisdiction of the property—

A. That is my idea.

Q. Of the assets?

A. Yes sir.

Q. Do you understand that the bankrupt law provides that this court shall have the power, equitable powers to appoint receivers in certain cases?

A. Yes sir.

Q. And is also given power to enforce its orders?

A. Yes sir.

Q. Then even with the distinction you have drawn between the jurisdiction of the person and the estate, what

do you say as to the power of the bankrupt court to enjoin any interference with the property pending the bankrupt proceedings, filing the petition and pending the adjudication; do you deny that this court has this power?

A. That is a question—

Q. I want an answer to the question.

A. I cannot answer the question.

Q. You do not know whether this court has the power or not?

A. No sir.

Q. You do know this court issued such an order?

A. Oh yes, that is to say, I knew that this court issued the order of February 11th, whatever its terms are. I saw that order.

Q. That order was to the receiver down there and other persons to refrain from interfering with the property. You knew that?

A. No sir, I did not know it enjoined anybody but the receiver.

Q. You know that an order of that kind binds not only the receiver, but everybody who has notice of it?

Q. Yes sir.

By Mr. Miller:

Q. You know an order of that kind binds the receiver having the custody of the property under the state court, if the court issuing the order has the jurisdiction and power under the law to make such an order?

A. Yes sir.

Q. That limitation has to go with it?

A. Yes sir.

Q. And you know further if the court has not the jurisdiction and power to make such an order, then it is void?

A. That is my opinion.

By the Court:

Q. You are the witness and you are a lawyer. I would like to have you tell the court whether you are standing for defense on the proposition that the orders are void or whether you have not interfered with them.

Mr. Miller: I submit that a defendant in a criminal prosecution can not be put to answer that question.

By the Court: He is on the witness stand.

By Mr. Miller: But he cannot be put to answer that question. He has a right to put his defense on any ground.

The Court: And the court has a right to investigate whether it is true.

Mr. Miller: But I submit with the utmost deference the court has not the right to ask a defendant in a criminal prosecution where he locates his defense.

The Court: Do you appear for Mr. Watts?
Mr. Miller: Not directly.
The Court: Do you appear for him?
Mr. Miller: No sir, I do not; I try to be reasonably frank—
The Court: I want to know whether you appear for him?
Mr. Miller: I do not.
The Court: Do you object to answering that question?
Mr. Fairleigh: I object for him.
By the Court:
Q. Do you decline to answer the question?
A. Yes sir.
The court hereupon adjourned until nine o'clock.

THURSDAY, MARCH 12, 1903.

MORNING SESSION.

The court met pursuant to adjournment, present the same as on yesterday.

Mr. Miller: The first thing that we want to offer in evidence this morning is the petition that has been spoken of as in Mr. Hester's office; it has come in this morning; the petition filed by Mr. Connor in the circuit court of Floyd county, Indiana, at New Albany on the 14th day of February, 1903, and which is referred to in the entry made on that day.

Mr. Kealing: We have no objection.

Mr. Miller: That is an original paper of the record down there.

The Court: It may be copied in the record and the original returned.

Which paper so introduced in evidence is in the words and figures following, to-wit:

IN THE FLOYD CIRCUIT COURT,

JANUARY TERM, 1903.

Joseph T. Ryerson & Son }
vs. }
M. Zier & Company. }

TO THE HONORABLE W. C. UTZ, *Judge of the Floyd Circuit Court:*

Frederick D. Connor, receiver appointed by the United States district court for the district of Indiana, intervening in the above entitled cause respectfully shows to the court:

That on the 11th day of February, 1903, by the consideration of the United States district court for the dis-

trict of Indiana, upon the petition of the Inland Steel Company, John C. Thurston and John Dey, doing business as Dey Time Register Company, he was appointed by said court as receiver, with authority to take charge of all property of said M. Zier & Company and to hold the same in his custody until the further order of said court; That he has duly qualified as such receiver according to the requirements of the order appointing him, by filing his bond therein to the approval of the Hon. Albert B. Anderson, Judge of said court, and is ready to assume control of the property of said M. Zier & Company as soon as the same is turned over to him by the New Albany Trust Company, heretofore appointed as receiver in this cause by this court; a certified copy of the order of the United States district court is filed herewith and attached hereto marked Exhibit "A."

Your petitioner therefore, respectfully prays that said The New Albany Trust Company be directed and required to immediately turn over to this petitioner all of the property, assets, books, moneys, and other effects of said M. Zier & Company now in its possession and control and to immediately file with this court its account in writing, showing the amounts of money collected by it and now on hand. The petitioner further prays that said The New Albany Trust Company be discharged as such receiver herein.

FREDERICK D. CONNOR,
Receiver of M. Zier & Company.

STATE OF INDIANA, }
} *ss.*
County of Floyd. }

Frederick D. Connor, being duly sworn, on his oath says that the matters stated in the foregoing petition are true in substance and in fact as he verily believes.

FREDERICK D. CONNOR.

Subscribed and sworn to before me this 14th day of February, 1903.

CHARLES B. SCOTT, *Clerk F. C. C.*
By William F. Ruoff,
Deputy.

Inland Steel Company, }
vs. } In Bankruptcy.
M. Zier & Company. }

Comes now the Inland Steel Company, petitioner in bankruptcy herein, which having filed its petition to have

M. Zier & Company declared a bankrupt, now files its verified petition alleging that an emergency exists for the immediate appointment by the court of a receiver herein to take charge of the property and effects of said M. Zier & Company pending the hearing of said petition and the appointment of a trustee in bankruptcy herein, which petition reads as follows: (Here insert). And the court being advised after due consideration, finds that the prayer of said petitioner ought to be granted and that a receiver ought to be appointed to take charge of the property and effects of said M. Zier & Company previous to the hearing of said petition and the appointment of a trustee herein.

It is therefore considered and ordered by the court that Frederick D. Connor, be, and he is hereby appointed as receiver herein of the property and effects of said M. Zier & Company, with authority to take charge and possession of all the same and particularly the goods, wares and merchandise, books, papers, and effects of or belonging to said M. Zier & Company located at the city of New Albany, Floyd County, Indiana, and now in the hands of The New Albany Trust Company as receiver of said M. Zier & Company appointed by the Floyd circuit court of Floyd county, Indiana. And said receiver is ordered and directed to take into his possession the sheet iron and boiler manufacturing plant in said city of New Albany, together with all the tools, machinery, appliances, material, and finished product within and about said plant at said city of New Albany, which plant is located at the corner of Pearl and Oak street of said city, and all other property of said M. Zier & Company wheresoever found and situated.

It is further ordered and adjudged by the court that The New Albany Trust Company be and it is hereby required to deliver up to said Frederick D. Connor as receiver of the said property and effects of said M. Zier & Company now in its possession and to refrain hereafter from interfering in any way with the said receiver's possession and control of the same.

It is further ordered that before entering upon the duties of his said trust herein, the said Frederick D. Connor shall execute to the clerk of this court and file with the clerk of this court a bond and sureties to the approval of this court in the sum of Ten Thousand Dollars ($10,000), for the faithful discharge of his duties as such receiver and take the oath required by law of said officers.

February 11, 1903.

ALBERT B. ANDERSON,
Judge

I, Noble C. Butler, clerk of the United States district court for the district of Indiana, hereby certify that the above and foregoing is a true and correct copy of an order made and entered by the United States district court for the district of Indiana, on the records of said court, at New Albany, Indiana, on the 11th day of February, 1903, of which records I am the proper custodian.

NOBLE C. BUTLER,
Clerk, U. S. District Court.
By GEORGE B. CARDWILL,
Deputy Clerk.

[SEAL.]

(Endorsements.)

No. . .
Floyd Circuit Court
January Term, 1903.

Jos. T. Ryerson
vs.
M. Zier & Co.

Petition of Frederick D. Connor, receiver.

FILED
in open court,
Feb. 14, 1903.
Charles B. Scott,
Clerk, F. C. C.

Hester & Hester, Attorneys.

Mr. Miller: Now if Your Honor please, we have a number of character witnesses that we wanted to introduce, and we want to do that at this time in order that they may be discharged; they are judges of the courts down there at Louisville.

The Court: Well do you mean you want to introduce witnesses as to the reputation of the defendants?

Mr. Miller: As to their standing, yes sir in Louisville as men of integrity.

The Court: Affecting, of course, their credibility as witnesses.

Mr. Miller: Their credibility as witnesses, and the probability that they would intentionally do anything wrong.

Sterling B. Toney, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Miller.

Q. Judge Toney will you be good enough to state your name in full?

A. Sterling B. Toney.

Q. Where do you live?

A. Louisville, Kentucky.

Q. And have lived there for—

A. (Interrupting) Twenty-seven years.

Q. Have you held any official position there.

A. For seventeen years I have been upon the bench there, the local state bench, as judge of one of the law and equity courts, and I am now one of the chancellors,—the two chancellors.

Q. Are you acquainted with W. W. Watts and David A. Sachs?

A. Very well, sir. Intimately I may say.

Q. Have they habitually practiced in your court and before you?

A. Since I have been upon the bench.

Q. Are you acquainted with their standing in Louisville as to their integrity and fidelity to duty?

A. I am.

Q. And as to their veracity?

A. Yes sir.

Q. Will you be good enough to state to the court the standing and reputation of Mr. Watts in that community with reference to these subject-matters?

A. Judge, Mr. Watts is regarded as one of the men who walks in the high rounds of the profession; he is a gentleman in every sense of the term, socially and at the bar, professionally. I have never known him in the seventeen years that he has practiced before me to be guilty of a discourtesy or to violate his word as a member of the bar; I have never heard it questioned.

Q. Now you may answer the same question as to Mr. Sachs, David A. Sachs.

A. I think Mr. Sachs is his senior, perhaps, at the bar, and my intimacy with Mr. Sachs is both professional and social; and I can say that same of Mr. Sachs that he has never in his whole career before me, and he has a large practice, forfeited that esteem; he is a man that walks a high round of the profession and I am sure there is not a judge in Louisville who would not accept his statement as he would a statement under oath; and I was amazed to hear—

Mr. Kealing: (Interrupting) Well never mind.

Mr. Miller: That is all.

Mr. Kealing: I have no cross-examination.

Emmett Field, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Miller.

Q. Will you be good enough to state your name?

A. Emmett Field.

Q. Where do you live?

A. Louisville.

Q. How long have you lived there?

A. I was born in Louisville and have lived nearly all my life there.

Q. What is your profession?

A. Lawyer; at present on the bench.

Q. How long have you been on the bench?

A. About eighteen years.

Q. Of what court?

A. Well originally the common pleas court, the Jefferson court of common pleas; that was subsequently changed, and now the courts are all consolidated into one circuit court; I am now one of the Judges of the Jefferson circuit court, common pleas division.

Q. Are you acquainted with W. W. Watts and David A. Sachs?

A. Very well with both of them.

Q. Are you acquainted with the standing of those gentlemen in Louisville as men and as lawyers as to their integrity, fair dealing and veracity?

A. Yes sir I have been acquainted with both of them ever since they came to the bar, and probably was acquainted with them as students before they entered the bar, by being practically raised in the same city and largely in the same community; I have known them very well during all of that time, and there has never been a question concerning the veracity or the character or reputation in any other respect concerning these gentlemen that ever I heard of.

Q. Well what is their standing in that regard, those regards?

A. It is of the best.

Q. You are, I think, an instructor in the law school there are you not?

A. Yes, I have been with the law school about twenty years.

Witness excused.

Schackelford Miller, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Miller.

Q. Will you be good enough to state your name?

A. Shackelford Miller.

Q. Where do you live?

A. I live in Louisville.

Q. What is your profession?

A. I am a lawyer and at present I am one of the chancellors of the Jefferson circuit court.

Q. How long have you been upon the bench there?

A. Seven years; two years by appointment and five years of term elected by the people.

Q. Are you acquainted with David A. Sachs and William W. Watts?

A. Yes sir, I know them both very well.

Q. How long have you known them?

A. Well I could hardly say; I have known them nearly all my life, probably twenty-five years, or longer.

Q. Are you acquainted with their reputation in Louisville personally and at the bar as members of the bar, for integrity, fair dealing and veracity?

A. Surely so.

Q. You may state as to both of them, or if you have any distinction to make, as to each of them, what that reputation and standing is?

A. That reputation and standing is of the very highest. I will make this distinction between them; making none except that of time; Mr. Sachs and I both studied law at the same office; I think he was ahead of me in the office of Isaac Caldwell, and in that way I knew Mr. Sachs before I knew Mr. Watts, although I knew them both, my relations with Mr. Sachs were closer by reason of that fact, both studying in the same office.

Q. Would the statement of either of these gentlemen be accepted—

Mr. Kealing: Objected to, don't answer that question.

The Court: Confine your question to general reputation.

Mr. Miller: The standing is of the highest?

A. Yes, I said the standing was of the highest. There would be no distinction between the two gentlemen except as to time.

Witness excused.

Thomas R. Gordon, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questioned By Mr. Miller.

Q. What is your name, please?

A. Thomas R. Gordon.

Q. Where do you live?

A. I live in Louisville.

Q. How long have you lived there?

A. Thirteen years and a few months.

Q. What is your profession?

A. I am a lawyer.

Q. Are you now upon the bench?

A. Yes, sir; recently gone upon the bench.

Q. Had you been practicing at the bar before you went upon the bench?

A. Yes, sir; since March, 1890.

Q. Of what court are you now the judge?

A. I am judge of the Jefferson Circuit Court, Common Pleas Branch, Second Division of the Court.

Q. Are you acquainted with W. W. Watts and David A. Sachs?

A. I have been personally acquainted with both of those gentlemen since I went to the Louisville bar, as I say, since March, 1890. I was acquainted with them as lawyers while I yet practiced in the country; I have known them intimately, personally and professionally since I went to the Louisville bar.

Q. Are you acquainted with the reputation of each of them personally and at the bar as to their integrity, fair dealing and veracity?

A. I am.

Q. Will you be good enough to state to the court what that reputation is as to each of them?

A. I don't think there is any lawyer at our bar, and I weigh my words when I say that, who stands better personally and professionally than the two gentlemen whose names you mention. They belong to that class of lawyers that I am glad to say is not a small class at our bar whose word may be taken unreservedly and whose professional character and whose professional conduct is not only unquestioned, but in my judgment is unquestionable.

Witness excused.

Upton W. Muir, a witness called on behalf of the defendants, being duly sworn, testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY MR. MILLER.

Q. Will you be good enough to state your name to the court?

A. My name is Upton W. Muir.

Q. Where do you live?

A. Louisville, Kentucky.

Q. How long have you lived there?

A. I have lived there all of my life.

Q. You are thirty-five or forty years old?

A. About thirty-nine, sir.

Q. What is your profession?

A. I am a lawyer, and at present judge of one of the divisions of the common pleas branch of the Jefferson circuit court.

Q. How long have you been judge?

A. I was appointed by Governor Beckham last March and served until the first of January, and am now serving under election by the people of last November.

Q. Are you acquainted with David A. Sachs and William W. Watts?

A. I know them personally, intimately and well, and have known them for fifteen years.

Q. Are you acquainted with the reputation of each of them and his standing in Louisville personally and at the bar as to the matter of integrity, fair dealing and veracity?

A. I am well acquainted with them, and in all of those capacities; I have practiced law with them, and since I have been upon the bench I had them before me acting as lawyers in my court, and I know their character for veracity and standing at the bar, and these gentlemen I know well.

Q. Do you know what their associates think of them?

A. I do, yes sir.

Q. Will you be good enough to tell the court what is the standing and reputation of each of them at the bar, and in that community for veracity, fair dealing and integrity?

A. For veracity, fair dealing and integrity, socially and as lawyers, in the character of practice they engage in they stand as high as any lawyer in that community. Their character in all those respects is unimpeachable.

Q. How many judges of the Court of Common Pleas are there—What circuit courts are there in Louisville engaged in civil business?

A. There are five in civil business, one in criminal; all five are here, of the civil courts, who have just testified.

Cross examination, by Mr. Kealing.

Q. You spoke of the character of the practice they are engaged in. Are they confined to a particular line?

A. No, they are general practitioners; they don't handle any criminal practice; all except that. Their practice extends over the common law and equity practice entirely in both courts.

Witness excused.

The Court: Now, gentlemen, in the first place the character and reputation of a witness is presumed to be good until it is attacked. (To the District Attorney:) Do you expect to attack the general reputation of these witnesses?

Mr. Kealing: No sir.

The Court: Now then as to the proposition that they are men of character and standing in their profession, or as to their professional standing and reputation, do you expect to introduce any witnesses on that question?

Mr. Kealing. No sir.

The Court: It isn't worth while then to introduce any more witnesses on that point.

Mr. Miller: We have but one more witness, on that point, your Honor.

The Court: Very well.

George Durrell, a witness called on behalf of the defendants, being duly sworn testified as follows:

Direct Examination.

Questions by Mr. Miller:

Q. State your name to the court?

A. George Durrell.

Q. Where do you live?

A. Louisville.

Q. How long have you lived there?

A. Since I was seven years old, except when I was away at school.

Q. What is your profession?

A. Lawyer.

Q. How long have you practiced law?

A. Nearly thirty years.

Q. You may state what position you occupy now?

A. None at present; I am just off the bench.

Q. How?

A. I am just off the bench.

Q. What position did you hold? What judgeship?

A. I was Judge of the Court of Appeals of Kentucky from the Louisville District.

Q. How long?

A. For seven years.

Q. You were Assistant United States Attorney there?

A. On two different occasions, under Garfield & Arthur and afterwards under Mr. Harrison.

Q. Will you be good enough to state whether you are acquainted with David A. Sachs and William W. Watts?

A. I have known Mr. Sachs nearly thirty years, and Mr. Watts I suppose between twenty and twenty-five years.

Q. Are you acquainted with their reputation in Louisville and their standing at the bar as men and as lawyers for integrity, fair dealing and veracity?

A. I am.

Q. Will you be good enough to state as to each of them what that reputation and standing is?

A. It is excellent.

Witness excused.

David A. Sachs, called in his own behalf and as a witness on behalf of the defendants, being first duly sworn testified as follows:

DIRECT EXANINATION,

BY MR. SMITH:

Q. Mr. Sachs, you will please give us your name?

A. David A. Sachs.

Q. Where do you reside?

A. At Louisville, Kentucky.

Q. And your profession?

A. Lawyer.

Q. How long have you been engaged in the practice of the law?

A. Nearly thirty-one years.

Q. How long have you been residing at Louisville, or engaged in the practice there?

A. I think I came back to Louisville in '73.

Q. Were you practicing elsewhere than Louisville?

A. Yes sir.

Q. Mr. Sachs, were you in any wise connected or interested in the suit of Ryerson & Son against the M. Zier & Company pending in the Floyd Circuit Court of this State?

A. I was not.

Q. Were you in any way interested directly or indirectly either in that proceeding or in the bankrupt proceeding against said corporation pending now in this Court?

A. I was not.

Q. Did you at any time or have you now any connection or professional employment, or any employment whatever in said causes or either of them in behalf of any one?

A. I have not and never had.

Q. Did you attend the Floyd Circuit Court on February 18, 1903; that was Wednesday of that week?

A. I don't think that the Floyd Circuit Court was in session on February the 18th, 1903. I was before the Judge of the Floyd Circuit Court in chambers.

Q. Did you go from Louisville to that court on that day before the Judge?

A. I went from Louisville before the Judge on that day?

Q. Who went with you?

A. Mr. W. W. Watts.

Q. Please state to the court the occasion of that visit of yours?

A. Mr. Watts told me by phone, or communicated with me, I don't distinctly recollect how the communication came, that he wished to have me go with him before Judge Utz as his friend and counsel, and asked me to meet him at the station at Seventh Street in Louisville on the afternoon of the 18th at 3 o'clock, which I did; and in going over Mr. Watts explained to me that he appeared before the Judge of this Court, and that he came here I think with a limited appearance, or with some papers from the Floyd Circuit Court, and engaged in an argument before your Honor in this court; that he had promised this court to advise his client to deliver up some property, and he was fearful that Judge Utz might not take well to it, or agree to it, or acquiesce in what he had done, and I went there as his friend—and to expunge some records I believe is the word that he used from the Floyd Circuit Court that had been on file there: that he was required to do or promised to do by this Court.

By the Court:

Q. Had what?

A. That he had promised this court.

Q. Did he tell you that he had promised this court to do that?

A. Yes sir.

By Mr. Smith:

Q. Mr. Sachs did you go as the attorney, as the employed attorney or in the expectation of receiving any compensation whatever for the services you rendered your friend, Mr. Watts.

A. I did not.

Q. How long had you known Mr. Watts?

A. Twenty years I guess.

Q. Had you known him well?

A. Yes.

Q. For twenty years?

A. Yes sir.

Q. He was a member of the same bar?

A. Yes sir.

Q. What time of day was it that you went to New Albany?

A. Left Louisville at three o'clock, or about that time; of course these little incidents I cannot exactly remember, but it was late in the afternoon, I think in the neighborhood of three o'clock, or half past three.

Q. And how long does it take you to make the trip from Louisville to New Albany, or about how long?

A. About forty-five minutes.

Q. Where did you go when you arrived at New Albany?

A. To Judge Utz's chambers.

Q. Did you go directly from the depot to Judge Utz's chambers?

A. That is my best recollection.

Q. Just you and Mr. Watts.

A. Yes sir.

Q. Who did you find in his chambers at the time you got there?

A. Nobody but Judge Utz.

Q. Well state to the court what took place between you?

A. Well as near as I can recollect we came in there, and Mr. Watts explained substantially what I have just related that had taken place at the court here. Judge Utz became very much enraged—

By the Court:

Q. Very much what?

A. Enraged, and said in so many words that he would not live up to the promise; that Mr. Watts had no right to make such promise; I saw there was very little chance for me to say anything to him, so I perhaps said very little on the subject.

By Mr. Smith:

Q. Were you there in any other capacity except as you have stated, the representative of your friend and brother attorney, Mr. Watts?

A. No sir, at no time.

Q. Where did you go—How long did you remain at Judge Utz's office?

A. Oh not a very long time; perhaps a half hour; it was late when we got over there.

Q. Who left there with you?

A. Mr. Watts.

Q. Where did you then go?

A. As we went out of there, Judge Utz said to us,—I suppose it was directly to both of us, "Notify the attorneys in this case, go by Mr. Kelso's office and notify the attorneys, or words to that effect, to appear here, all of the attorneys in this case, to-morrow morning at nine o'clock." We left there.

Q. Just let me interrupt you a moment. Did he state for what purpose he wanted them there the next morning at nine o'clock?

A. He did not. He didn't state what he wanted them to be there for.

Q. Had he determined or made disposition in any way of any matters on the afternoon of Wednesday that you and Mr. Watts were there?

A. He had not.

Q. Now you may continue your answer.

A. I have an impression that we went by Mr. Jewett's office, and I think Mr. Watts notified him, and from there we started toward the station, or where you take the car; I will say frankly to you I am not familiar with New Albany,—and on the way we stopped at Mr. Kelso's office. Mr. Watts introduced me to Mr. Kelso, and I simply delivered the message that Mr.—Judge Utz had asked me to deliver, to tell all of the lawyers to be there and asked Mr. Kelso to notify the lawyers. Mr. Kelso made the remark that he wasn't on good terms, I believe with Mr. Stotenberg, Stotsenberg, something of that kind, Stotsenberg I believe it is; I said, "Well, it is with you; that is what the Judge said, to notify all the lawyers to be there in the morning." Then I came home.

Q. How long were you in Mr. Kelso's office Mr. Sachs?

A. Not long enough to sit down; standing up we delivered the message, and walked down; Mr. Kelso walked down, and that Stotsenberg incident, I think happened right on the sidewalk.

Q. Going back to the time you were at Judge Utz's office, was there anything said at that meeting between you, Judge Utz and Mr. Watts in regard to the resignation of the New Albany Trust Company as receiver, or its removal from that position, or in regard to the appointment of any other receiver, in its stead?

A. No.

Q. Anything of the sort mentioned?

A. No.

Q. At the time that you got to Kelso's, arrived at Mr. Kelso's office, was there anything said by him to you about having received a telephone to the effect that you were on your way there?

A. I don't remember it.

Q. You don't remember that?

A. No I do not.

Q. At Mr. Kelso's office on the occasion mentioned, was there anything said about the resignation of the New Albany Trust Company as receiver of M. Zier & Company, or was

there anything said in regard to the appointment of any other receiver in its stead?

A. When was that?

Q. That was at the time that you and Mr. Watts delivered the message there to Mr. Kelso at his office?

A. There was nothing said except that I delivered the message—

The Court: The question is was there anything said on that subject? Answer yes or no.

The Witness: Will you read the question please?

(The question was read by the stenographer.)

A. No.

Q. Was there anything said there at that time about the appointment of Mr. Kelso or his accepting the receivership in the stead of the New Albany Trust Company?

A. No.

Q. Was there anything said about his accepting it provided you or Mr. Watts or both of you would indemnify him, or make him safe in the expenses?

A. Absolutely no.

Q. Where did you go from Mr. Kelso's office?

A. Thursday evening?

Q. No Wednesday; we are on Wednesday yet.

A. I went home.

Q. What time did you get to Louisville, do you remember?

A. No it was dark; I don't remember the time; I suppose in the neighborhood of six o'clock, perhaps a little after or a little before.

Q. Did you and Mr. Watts separate when you got to Louisville?

A. Yes sir.

Q. At what point, do you remember?

The Court: Why take up so much time with that Mr. Smith? They certainly didn't do anything in Louisville on Wednesday night.

Q. Now on Thursday, Mr. Sachs, did you return to New Albany?

A. Yes, under the direction of Judge Utz I went back there with Mr. Watts as his attorney and friend, as I was directed to come back.

Q. What time did you arrive at New Albany the next day?

A. About ten o'clock.

Q. This is on Thursday, the 19th. Now on your arrival there where did you first go?

A. To Judge Utz's chambers.

Q. Did you find any one there; if so, who?

A. Found Mr. Kelso there.

Q. Was the Judge there?

A. Yes sir.

Q. Any one else?

A. No sir.

Q. Mr. Watts went with you?

A. Yes sir.

Q. State what took place there upon your arrival.

A. On Thursday I waited there with Judge Utz and Mr. Kelso for sometime for the attorneys that were expected to be there that morning. The message came that Mr. Hester—I believe that is one of the attorneys in the case—and Mr. Stotsenberg were out of New Albany and were at Jeffersonville. There was nothing done with reference to the striking out of that record, or the expunging of that record, or with reference to—

The Court: Well, tell what did take place: I don't care to know what did not take place.

A. (Continuing) Well on that Thursday morning Judge Utz seemed to be—Judge Utz was—wouldn't listen to any further argument from me with reference to the expunging the record, and while I was talking to him he was still insisting upon holding on to the property. About that time Mr. Jewett, the younger Mr. Jewett came in, and he waited there a few moments and he then went out. The older Mr. Jewett, I believe they call him Col. Jewett, came in and spoke to the Judge with reference to the delivery of the property and what had taken place up here. He then went out. Mr. Kelso was sitting at the table. I said to him that I expect, Judge, that that property has been turned over, and Mr. Kelso said, "Well, I will find out," and he lifted the 'phone and then he said that the property had been turned over.

By the Court:

Q. To the Receiver of this Court?

A. Yes, well he didn't say that; he said the property had been turned over.

Q. Did you understand that was what was meant?

A. I understood just what he said, that the property had been turned over.

Q. I asked you did you understand at that time that it was turned over to the Receiver of this Court.

A. I didn't know that there was a Receiver of this Court. I wasn't familiar with the record.

Q. Answer the question. Read it to him.

The stenographer read the preceding questions.

A. I am frank to say that I did not know that there was a Receiver appointed.

Q. I didn't ask you whether you knew about it. You answer that question or there will be trouble. If you didn't understand it you can say so, if you did you can say so. Read that question once more.

(The stenographer read the question as follows:) "Did you understand at that time that it was turned over to the Receiver of this Court?"

A. Yes sir.

By Mr. Smith:

Q. That was after Mr. Jewett had gone out that Mr. Kelso gave you this information?

A. Yes.

Q. Now Mr. Sachs prior to the time that Col. Jewett came in, you say that you and Judge Utz had been discussing the matter in regard to this property. What discussion had taken place between you?

A. Well, Judge Utz was insisting on holding on to the property and preventing, or rather not acquiescing in the promise that Mr. Watts had made to this Court to deliver it, and I told Judge Utz that I thought he ought to permit Mr. Watts at least to put upon the record, or put himself in such shape, and deliver the property to the Court. The discussion ended, was broken into when Mr. Jewett came in and that prompted me to say, to ask if the property had been delivered as Col. Jewett went out. I said to Judge Utz, I said, "Judge, that firmly settles it, if the property has been delivered you ought now to release Mr. Watts." He still was persistent and said no he hadn't made up his mind to do that.

Q. Was there anything said upon this day as to the resignation of the Trust Company or the appointment of any receiver in its stead.

A. On Thursday?

Q. Yes.

A. Not that I now remember.

Q. How long did you remain in the office Thursday morning?

A. About an hour or an hour and a half.

Q. Did anything else occur that you remember in regard to this matter?

A. No sir.

Q. Mr. Sachs, on that morning or any time during the day was there anything said to you or in your hearing by either Mr. Kelso or Judge Utz about you or Mr. Watts or both of you agreeing to stand for the cost and expense that the prosecution of this matter might bring about?

A. No sir.

Q. That is, I mean the prosecution of it by any Receiver that might be appointed?

A. No sir.

Q. Where did you go when you left the office, Mr. Sachs, on that morning?

A. I went to Louisville.

Q. What time did you go home Thursday?

A. At noon.

Q. At noon; you and Mr. Watts returned together on Thursday?

A. Yes sir.

Q. Were you back in New Albany at any other time, Mr. Sachs, if so, tell when next?

A. Yes I was back there on Friday the next day.

Q. How come you to make a return trip there on Friday?

A. I received a telephone message from Judge Utz to come back there.

Q. When did you receive that message?

A. Thursday afternoon at my office.

Q. What was the purport of the message?

A. The purport of the message was to come back there and bring Mr. Watts back.

Q. Well did you notify Mr. Watts of the fact? Did you go dack with Mr. Watts?

A. Yes, I went back with Mr. Watts the next morning.

Q. What time did you get into New Albany on Friday?

A. Friday?

Q. Yes.

A. About ten o'clock.

Q. Where did you go from the train when you arrived at New Albany?

A. Judge Utz' chambers.

Q. You went directly to Judge Utz' chambers?

A. Yes sir.

Q. Who went with you?

A. Mr. Watts.

Q. Who did you find if anyone there at the time you arrived?

A. Mr. Kelso.

Q. Where was Judge Utz, do you know?

A. He was there.

Q. Then you found Mr. Kelso and Judge Utz?

A. Yes sir.

Q. Were they all that you found in the chambers there at the time?

A. That is all.

Q. Then you didn't go directly from the train to Mr. Kelso's office?

A. No sir; I did not.

Q. At Judge Utz' office what took place after your arrival,—that is, on Friday?

A. Well, I began with Judge Utz about the same subject, that I would like to be heard on expunging that record for Mr. Watts and help carry out his promise. The Judge was in no better humor than he had been with reference to that property; insisted on holding on to it; he said that the Receiver of this Court—that he had been looking into the question and that the Receiver of this Court had made himself a party to his court and that under some Indiana statute he had a right to hold on to that property. I said to him, "I don't know anything about your Indiana Statutes; that property has been delivered.

By the Court:

Q. Delivered to whom?

A. I didn't say in that conversation as to whom it was delivered. I simply said it had been delivered. I will say frankly to you that it had been delivered to some representative of your Court; that was in my mind; "but as the property had been delivered I am of the opinion that you had better never touch that property; if you do, you will find something that you have never seen before; you would just as well get ready with your soldiers, or your State Militia," or words to that effect; and to which he responded, "I haven't got any malitia but I have got a good sheriff and a good posse that will take that property and keep it." And I again expostulated with him and said, "I am of the opinion the best thing for you to do is to let the property alone that has been delivered." He said, "I have made up my mind to remove the Receiver that went into the District Court and promised or agreed"—I don't know the word that he used—"to deliver up that property and appoint another Receiver." Well, I am sure it was Mr. Kelso then that opened up the statute and looked at it and undertook to direct my attention to it. I told him that "I don't care anything about his Indiana Statute; I couldn't base any opinion on them and that I was there but for the one purpose to help Mr. Watts to do what he had promised." Then I gave it as my opinion to Judge Utz that if he had made up his mind to remove his Receiver the better plan to pursue, or the better procedure to pursue, would be to let his Receiver come into this Court and make himself a party to this Court by inter-pleading, setting up all the facts from the incipiency, from the beginning, when Mr. Watts and the New Albany Trust Company appeared before you, and submit to your jurisdiction and get a determination here. That would be the better mode of procedure. He turned to Mr. Kelso and he said, "You bring notice, official notice to the Court, of the fact, of the facts of the delivery of this plant"—I think that had

been delivered in the meantime—"and I will remove the Receiver and will appoint you."

Q. Now, Mr. Sachs, after that statement did you continue there or what took place next? Just go on and state it as it was.

A. That was up to the noon hour. Mr. Utz, Judge Utz turned to Mr. Kelso and he said to him, go and prepare such a statement—I supposed he had reference to the statement bringing to the Court's knowledge the facts—and I will remove the present Receiver and appoint you.

Q. Did you gentlemen go to lunch then?

A. Then Mr. Kelso asked me to go by his office and wait for him and he was not going home to dinner and he would go and get some oysters, take me to some place where we could get some oysters; I then went to Mr. Kelso's office.

Q. What took place at his office, Mr. Sachs?

A. At Mr. Kelso's office he went into the front room and dictated some paper and came back. It was a long room and I was sitting in the back room reading the paper; and he came back there and he said, "Mr. Sachs, I wish you would sign this statement for me bringing these facts to the Court's notice;" why, I said—which were substantially, I believe, I didn't read it very carefully, in the line with what I have said—I said, "Mr. Kelso, I represent neither party nor privy in this thing; I have no interest in it one way or the other." "Well, he said, I can fix that. I have got any number of creditors. You can take any creditor." He then walked to the front part of the house and he destroyed that paper; then brought to me a second paper that I signed, believing that what in my opinion was the course of procedure to follow, would be followed, that is to file an interpleader in this Court setting up all those facts.

Q. Did Mr. Kelso assign any reason why he wanted you to sign that paper?

A. Oh yes; he said that as the Court had signified its willingness to appoint him as receiver, he either could not, or felt a delicacy in signing it.

Q. Was there anything said about whether or not he was disqualified under the Statute to become Receiver provided he was attorney of record, or anything of that kind?

A. I don't think—I don't remember that he said that he was disqualified under the statute, but he didn't like to appear as having one Receiver removed and having another appointed.

By the Court:

Q. Now, the paper that you signed at that time is the petition that appears in this record and which was read here yesterday upon which Judge Utz removed the New Albany Trust Company and appointed Mr. Kelso as Receiver?

A. Yes sir.

Q. And you signed that as the attorney of whom?

A. I don't know, if you honor please, because I haven't got the paper before me and I haven't it in mind.

Q. Could you refresh your recollection by looking at the copy of the petition?

A. How I signed it?

Q. Or for whom you were signing that paper?

A. (After the witness had looked at a paper in the certified record of proceedings of the Floyd Circuit Court) United States Tube Company. It just happened exactly as I told it to you.

Q. Now you signed that petition requesting Judge Utz to remove the New Albany Trust Company and appoint Kelso as Receiver in its stead?

A. Yes sir.

Q. And the last thing that Judge Utz had said to you upon the proposition was that he would find some way to take that property?

A. Yes sir.

Q. You have so testified haven't you?

A. Yes sir.

The Court. Proceed.

By Mr. Smith:

Q. In that petition that his honor states to you, the petition that asks for the removal of the Trust Company and the appointment of Kelso, is there anything said about Kelso in that petition?

Mr. Kealing: The petition shows for itself.

A. Well, if your Honor please, I don't know that that was the petition that the Court acted on or not; I never saw it afterward.

By the Court:

Q. Do you want to qualify your statement of that awhile ago?

A. What was the statement?

The Court: Mr. Stenographer read the question and answer to the witness.

A preceding question and answer was read by the stenographer as follows: "By the Court. *Q.* Now the paper that you signed at that time is the petition that appears in this record and which was read here yesterday upon which Judge Utz removed the New Albany Trust Company and appointed Mr. Kelso as Receiver. *Answer.* Yes sir."

The witness: I don't know, your Honor; I don't know whether that petition was ever filed; I don't know what ever became of it; I never saw it after that moment.

By Mr. Smith:

Q. Did you know what order was made upon that petition at that time, Mr. Sachs?

A. I did not; I did not.

Q. What did you do with the petition after you had signed and sworn to it?

A. Left it with Mr. Kelso.

Q. Did you prepare any order or have anything to do with the preparation of any order upon that petition?

A. I did not.

Q. Did you ever until after these proceedings in this court were instituted against you, that is the citation, know what order had been taken upon that petition?

A. I did not, and I will say further that I believed that when that petition was signed that the intention was that it be carried out just exactly as I have given my opinion that it should be; that the new receiver would appear here in this court and set up all the facts by interpleader and have the question determined.

By the court:

Q. By this court?

A. Yes sir; by your court.

By Mr. Smith:

Q. Judge Utz had told you before that, I believe you say, that he was going to remove the receiver and had directed Mr. Kelso to prepare an order and that he would appoint him?

A. He did. He had determined upon that.

Q. Did any conversation occur between you and Mr. Kelso on that occasion in his office in regard to the taking or retaking of this property from the Federal Court Receiver?

A. No sir, I was certain as I—

The Court: You have answered the question; it is unnecessary to add anything.

Q. Was there any conversation in there in regard to you or Mr. Watts or any of you, either one of you, assuming any liability, or agreeing to assume any liability, provided Mr. Kelso accepted the Receivership tendered to him by Judge Utz?

A. No sir.

Q. Why did you sign that petition?

A. I signed that petition because the principal part of the property—all of the property except perhaps a few hundred dollars had been turned over to the Receiver of this Court and I thought that it would be the best way to extricate Mr. Watts from the position of being in trouble in both courts, and by this means I could then, or they could then come and file their interpleader here, and it would only be a delay of perhaps three hours' ride, or the ride to come here and file

the bill, and instead of taking the assets from the Court it would bring the assets here; it would then relieve Mr. Watts from the embarrassing position that he was in. That was my whole and sole object in the thing.

Q. From your conversation with Judge Utz at the time that he instructed the petition to be prepared by Mr. Kelso, did you believe that that course was going to be pursued?

A. I did.

Q. You say you didn't file the petition yourself?

A. I did not.

Mr. Kealing: He has been over that two or three times.

Q. Did Mr. Kelso ever say anything to you at any time, at that time or any other time, did Mr. Kelso ever say anything to you about turning over to you his claims and appointing you as his attorney as Receiver?

A. He did not. You mean to represent those claims?

Q. Yes, I ask this question to find out as to the representation of those claims.

A. He did not. Never.

Q. Did he at any time ask you to act in the capacity of attorney for him as Receiver in said suit.

A. Coming from—

The Court: Answer the question. Read the question to him.

The question was read.

A. Yes; and I refused.

Q. When and where was that and state what took place.

A. The morning that Judge Utz—Friday morning that Judge Utz had said that he was going to remove his Receiver and appoint Mr. Kelso, coming from Judge Utz's office Mr. Kelso said that Judge Utz had told him, after considering numerous other attorneys, mentioning their names—while I may know them by reputation I didn't know them personally—that he wanted Mr. Kelso to employ me. I told Mr. Mr. Kelso I was over there but for one express purpose, which was to try to extricate Mr. Watts and that I didn't want any employment, that he had a good local bar and there was good lawyers at Indianapolis. He said, "well, I don't know that I need any lawyer; this is a statutory proceeding and I am familiar with the laws of Indiana and I can run it myself."

Q. Did Mr. Kelso at the time he drew—at the time you signed this petition of which you have just been speaking, turn over any claim, either the Tube Company's claim or any other claim to you?

A. He did not. I never represented a party or privy.

Q. Was there any agreement of fee, or any payment of a retainer on a fee, either in these matters or in any matter for the Receivership?

A. No sir; never was promised a fee, asked a fee or accepted one.

Q. Did you ever give any advice to Mr. Kelso as to the Receivership at all?

A. Never.

Q. Mr. Sachs I find by the transcript filed as an exhibit to the response of Mr. Watts in this matter that as of date February the 14th there is an order said to have been entered upon some proceeding that Mr. Watts had instituted on that date asking for advice of the Court in regard to the presentation, or the permission to present certain matters involved to this Court, and at the conclusion of that order I find the following appears: "And now comes C. D. Kelso and asks leave of the Court to withdraw as the Attorney of Record for the following named parties, United Gas & Electric Company; United States Tube Company; Indiana Water Company; Simon David; and the Court now permits said C. D. Kelso to withdraw therefrom." Did you ever advise Mr. Kelso to withdraw as attorney for those parties?

A. I did not.

Q. Did you know that such an order had been made?

A. I did not.

Q. Did you ever advise the making of such an order or that it be inserted in the record although made as of date the 20th, that it be inserted in the record that was made on the day of the 14th?

A. I did not. Never heard of it until night before last.

Q. Did you at any time upon that day or at any other time say that you were a great man for records?

A. I did not.

Q. And that it could be inserted in the record while the Court was in session and could be put in that day's business.

A. I did not.

Q. You knew nothing of it then at all?

A. I did not. I didn't know a thing about it; never heard of it until night before last.

Q. Now we have proceeded on that Friday at noon to Mr. Kelso's office and you had told in regard to the preparation of the paper and your signing it. What took place after that?

A. I went with Mr. Kelso to get the oysters.

Q. To what place did you go, do you know?

A. No sir; I don't know.

Q. Did you find any of your friends there when you arrived?

A. Mr. Watts was there.

Q. Was there any understanding or agreement that he should meet you all there?

A. No sir.

Q. None that you remember?

A. No sir. Well I don't know; I was going to say, New Albany being a small place perhaps he was there and I don't know—I could only say I had no appointment or arrangement with him.

Q. You had not been at New Albany frequently before that?

A. No, I had not been to New Albany but once before that and that was I guess ten or fifteen years ago in a transaction with Judge Dowling.

Q. You hadn't had any practice in New Albany?

A. Oh not at all.

Q. Now at the time that you went to lunch there, you had lunch I suppose?

A. Yes, sir.

Q. How long did you remain there do you remember?

A. Well it was late and I guess it took us up to two or half past two I don't remember exactly.

Q. Where did you go to from the lunch room?

A. To Judge Utz's room, Judge Utz's chambers.

Q. The same place? His private chambers where you had been in the morning?

A. Yes, sir.

Q. Who was there when you arrived?

A. Judge Utz I think.

Q. Well who constituted your party then in the room, in the chambers there? Who constituted the party? Who made it up?

A. Judge Utz and Mr. Kelso; there may have been some others in there but I really can't remember.

Q. Do you remember whether or not Mr. Watts was there?

A. Well he came in very shortly after.

Q. He came in very shortly after?

A. Yes, sir; if he wasn't there.

Q. Did any one else come in during the afternoon?

A. Yes sir my younger brother, J. G. came in.

Q. The one that is called Joe?

A. Yes sir.

Q. He came in in the afternoon?

A. Yes sir.

Q. Do you remember about what hour of the day was that he came in?

A. I guess it was close on to 3 o'clock; that was about the time.

Q. Now state what took place in that room that afternoon, Mr. Sachs, as near as you can remember.

A. I don't know that I can go into detail but I can try to give you the result; it was that the Receiver—No, I think—yes, that Judge Utz told Mr. Kelso to prepare an order removing the Trustee and appointing himself and to prepare the bond; that was about the substance of it.

Q. Was there any discussion as to the bond and its cost etc.?

A. Yes, there was a discussion as to the bond and Judge Utz fixed the bond. I didn't pay much attention to it but Mr. Kelso made the remark that it would be an expensive thing to have a large bond. Utz, Judge Utz said that that wouldn't make any difference, it would come out of the costs anyhow, general costs; something or some words to that effect.

Q. Were those orders prepared according to Judge Utz's instructions or do you know.

A. Why, I don't know. Mr. Kelso and Mr. Utz and Mr. Watts and my brother left the chambers; left there.

Q. They left there about that time?

A. Yes sir; after that.

Q. You know where they went of your own knowledge?

A. No, I don't know where they went of my own knowledge.

Q. Where did you go?

A. I remained in the chambers; I had a headache.

Q. What was their occasion of leaving there; do you know why?

A. Why, Judge Utz had told Mr. Kelso to prepare his order removing the trustee for dereliction, or opposing of his authority, or whatever he might choose to call it, and appoint himself, and he went in order to prepare his order, I assumed, and Judge Utz and Mr. Watts went on the invitation of my brother who also invited me but I said I had a headache and remained in the court room.

Q. To go out for refreshments?

A. Yes sir.

Q. That was the time?

A. That was the invitation of course.

Q. And did Mr. Kelso go out with them?

A. He went out with them, yes sir.

Q. You remained in the office there?

A. I did.

Q. Was the invitation extended to you?

A. Yes sir, but I said I had a headache and remained back.

Q. You had a headache?

A. Yes sir, I suffer with vertigo more or less.

Q. You remained in the office and how long did you stay there?

A. Oh, I tilted the chair against the wall—

The Court: The question is how long you stayed there.

A. I can't tell.

By the Court:

Q. How long were you there?

A. Oh, perhaps an hour; in the course of an hour; somewhere in that neighborhood.

By Mr. Smith.

Q. Then where did you go?

A. Then I went out on the street.

Q. Did anyone else come back while you were there?

A. No sir; no, there was nobody came back there, that is not while I was there. I went out to see what became of my brother and Mr. Watts. I didn't find them and I walked around awhile and walked back to the Court House to see if they went around to the Court House and coming out I saw Mr. Watts coming up with some gentleman I didn't know; I asked where my brother was, he said he had just taken that car.

Q. What time was that?

A. I guess it was close to six o'clock; somewhere in that neighborhood.

Q. Taking a car for home?

A. Yes.

Q. What occured then? Go on then and tell what occurred.

A. I went home.

Q. What occurred with you then?

A. I went home.

Q. You went home with Mr. Watts?

A. Yes sir.

Q. Did you see Mr. Kelso any more after he left there?

A. Well, I saw him; he passed us as we crossed the street to take the street car.

Q. When you were leaving New Albany?

A. Yes sir.

Q. Did you see Judge Utz any more that afternoon?

A. No, I don't think I saw him any more.

Q. You and Mr. Watts saw Mr. Kelso when you were crossing the street to go home? About what hour was that Mr. Sachs?

A. In the neighborhood of 6 o'clock.

Q. You don't know of your own knowledge exactly when your brother left?

A. No I do not; I didn't watch the time.

Q. Did you know at that time when you left there that it was the intention of Mr. Kelso or anybody else to give notice to the Receiver and make demand of him for the property that he had in his possession?

A. I did not.

Q. Did you know that any proceedings were contemplated or in course of preparation, or prepared with a view of retaking that property from the Receiver of this Court?

A. I did not.

Q. Did you advise aid or assist in any way any such procedure?

A. I did not. I gave it as my opinion in the morning of that day not to attempt anything of the kind.

Q. Did you believe that any such proceedings were intended to be instituted or followed?

A. On the contrary I never believed that such proceedings would ever be undertaken.

Q. Well you at that time came home on Friday afternoon?

A. Yes sir.

Q. When were you next back at New Albany?

A. Saturday in the afternoon.

Q. What was the occasion of your visit on Saturday and who accompanied you, if anyone?

A. Mr. Watts went over with me. It was to respond to the process issued against Mr. Watts in the meantime.

Q. Do you remember when that contempt process was issued?

A. No; I really do not remember. I suppose the record will show.

Q. Was Mr. Watts cited to appear?

A. Yes sir.

Q. For what day?

A. For Saturday.

Q. And that was the occasion of your visit over there on Saturday?

A. Yes sir.

Q. What was done with that matter?

A. Respited until the following week.

Q. Some day the next week?

A. Yes sir.

Q. Where did you go when you got over to New Albany on that visit?

A. I am not sure whether I stopped to get some lunch or went directly to Judge Utz's office. That is where I went, I do not remember the direct course.

Q. Do you remember how long you were at Judge Utz's office?

A. A very short time it seemed to me.

Q. Who was at Judge Utz's office at the time?

A. I do not remember anybody but Judge Utz.

Q. Where was Mr. Watts?

A. He was with me, of course, we were together.

Q. Where did you go from there?

A. My impression is that I stayed there but a very short time and then came home.

Q. Did you see Mr. Kelso during that time on your visit over there on Saturday?

A. No sir; I have no recollection of seeing him Saturday.

Q. Did you on Saturday or any other time with Mr. Kelso go through the M. Zier & Company plant there at New Albany?

A. No sir; I do not know where it is.

Q. You did not make any such visit?

A. No sir.

Q. When did you next return to New Albany?

A. Sunday.

Q. How came you to make the visit on Sunday?

A. I was telephoned for by Mr. Kelso and Judge Utz, I think. I was telephoned for.

Q. Do you know who it was from?

A. I do not know positively. Perhaps it was Mr. Kelso or Judge Utz or both of them.

Q. What day was it that you received that telephone?

A. Saturday evening—Saturday night.

Q. Do you remember about what time of night it was?

A. About eleven or half past eleven, somewhere in that neighborhood.

Q. What was the occasion of that visit?

A. Citation to appear here had been made.

Q. Citation from this court?

A. Yes sir.

Q. Did they say on whom it had been served?

A. I do not remember whether they said. It included quite a number of people, and myself.

Q. Did they tell you whether it included you and Mr. Watts?

A. Yes sir; they said it included both of us.

Q. Did you go over next morning, that is Sunday morning?

A. Yes sir.

Q. For what purpose did you go?

A. To see that citation.

Q. How long did you remain over?

A. Perhaps an hour or may be not that long.

Q. Whom did you meet?

A. We came up the street and Mr. Watts and I went towards the court house, and Judge Utz and Mr. Kelso came out, and they said there was no fire in there, that they had adjourned to Mr. Kelso's office, and on the way down I walked with Judge Utz, and I told him again that Sunday morning, "If you had acted on my opinion, all this would

have been avoided. Why were you so stubborn"? or words to that effect.

Q. Sunday morning or Monday?

A. Sunday walking from the court house to Mr. Kelso's office.

Q. You came home from there at what time?

A. About noon.

Q. Who was at the meeting Sunday at Mr. Kelso's office after you went from the court house to his office?

A. Some gentleman besides Mr. Kelso Judge Utz and Mr. Watts that I did not know.

Q. The object of your visit then was to examine that citation, and you all talked about the citation?

A. Yes sir.

Q. And the conversation you say you had with Judge Utz was on going from the court house to Mr. Kelso's office?

A. Yes sir.

Q. You say you returned home about noon?

A. Yes sir.

Q. That was Sunday?

A. Yes sir.

Q. Did you go over to New Albany at any other time?

A. I did not.

Q. That ended your trips to New Albany?

A. Yes sir.

Q. With the exception of this Sunday trip, state what the object or purpose was you had in these visits to New Albany Wednesday, Thursday, Friday and Saturday?

A. None on earth except for the purpose of undertaking to get Watts out of the position that he had gotten himself in between the two courts and with a view of conciliating matters and satisfying the court here, by having the receiver there come up here and file his pleading and have the question determined here. That would relieve Watts from the promise he made which had put him in the embarrassing position and would have relieved the situation below? That in my opinion was a better plan to pursue.

Q. Did you ever advise, aid, assist or encourage any other course to be pursued than that?

A. I did not.

Q. Did these parties meet you again, and if so where?

A. Yes sir; they came over to the office on Monday.

Q. Tell us how that meeting occurred and who was there.

A. On Sunday Mr. Watts, as our names were included in the citation, suggested that perhaps we had better get ready to prepare some response, and Mr. Kelso asked if he could come over, and we said "yes." Mr. Keslo came over on Monday morning. However, before he came over he tele-

phoned to the office that he was coming. He said that some order had been promulgated from this court or had come down from this court on Sunday. I told him to bring a copy of that order, and that delayed him I think.

Q. Did he finally come over?

A. He did.

Q. Did he bring a copy of the order?

A. Yes sir.

Q. Do you remember the date of that order?

A. I think it was the 17th.

Q. What was the purport of the order—I don't mean for you to state the contents, but I want you to identify the order.

A. My impression is that the order was an appearance of the New Albany Trust Company as receiver of the Floyd circuit court, by its attorney W. W. Watts, and a voluntary agreement to surrender. Those may not be the exact words. The order will speak for itself; but in substance that is what the order was.

Q. Did you examine that order and read it there?

A. I did.

Q. Who was present when Mr. Kelso first came in and brought the order?

A. I think my brother M. A. Sachs was in the room?

Q. Morris Sachs?

A. Yes sir.

By the Court:

Q. Was that on Sunday?

A. No sir; Monday.

By Mr. Smith:

Q. When you read that order, did you make any statement to Mr. Kelso?

A. Yes; I said to Mr. Kelso that ends it.

Q. What did you mean?

A. Mr. Kelso and Judge Utz were insisting that they would not—it was Judge Utz insisted that he would not carry out the promise that Mr. Watts had made because no order had come down. That had been spoken of there in Mr. Kelso's presence every day.

Q. What time did Mr. Kelso get over to your office on Monday?

A. Ten or half past ten or eleven; he was late.

Q. Did any further conversation occur at the noon hour in regard to the matter except a discussion of the order relating to these transactions, I mean.

A. Oh yes; there was a good deal of talk, I can not remember exactly what was said.

Q. Was there anything said that morning between Mr. Kelso and anyone else in regard to you or Mr. Watts? I am speaking of the morning session.

A. Yes sir.

Q. In regard to you or Mr. Watts assuming any liability or having assumed any liability by reason of Mr. Kelso's accepting the Receivership.

A. Jonny Watts—John B. Watts—asked Mr. Kelso a question.

Q. What was the question.

A. Whether his brother Will had anything to do with retaking the property—W. W. Watts, or violating his promise I do not remember exactly the words. Mr. Kelso responded "No, he had nothing in the world to do with it."

Q. Was any question asked whether or not W. W. Watts had assumed any liability by reason of the taking of the property.

A. I do not hardly think there was.

Q. Read that question.

The question was read.

A. His brother asked him whether he was responsible in any way or had made any promise and Mr. Kelso said no.

Q. Did that end the conversation that morning?

A. Yes sir; I think it did.

Q. Did you all go out to lunch?

A. Yes sir.

Q. Did you take Mr. Kelso to lunch?

A. Yes sir.

Q. Was W. W. Watts there that morning at your office?

A. Yes sir.

Q. And John Watts?

A. Yes sir.

Q. How long did they remain there?

A. Up to the time we adjourned for the noon hour.

Q. What time did they get there, speaking with reference to the time that Mr. Kelso first arrived?

A. Soon after I telephoned for them.

Q. You adjourned: And did you return in the afternoon to your office?

A. Yes sir. In the meantime during the morning sometime, Judge Utz telephoned to know if he could come over and I told him yes.

Q. Did he say when he would come over?

A. About half past two or three I think.

Q. You got back to the office, you and Kelso and Watts did you?

A. Yes sir.

Q. Did Judge Utz come over.

A. Yes sir.

Q. Was John Watts over there too?

A. Yes sir.

Q. State what took place in the afternoon conference—I will ask you first, was Joe Sachs there?

A. Yes sir he came in?

Q. And Morris Sachs, and John Watts and Will— Go on.

A. Some discussion came up about the question of payment of costs in this Court between Judge Utz and Mr. Kelso. Mr. Kelso said that Mr. Watts he thought ought to bear the burden, or some words to that effect. Mr. Watts was not there at that time and I telephoned to Mr. Watts. Mr. Watts came in and I told him of it and he seemed very much astonished, that he had made no obligations to pay the cost and had no interest in the thing was taking no part in the thing and could not imagine where they thought such a thing came from.

Q. That was the costs of defending these citations?

A. That is the way I understood it. Mr. Kelso said it would cost quite a sum of money and he was not able to bear it. Judge Utz said "It won't cost a great deal and I have some money in Court, or in the Receiver's hands," (I don't remember which remark it was) "and you pay all the costs out of that."

Q. Did he claim at that time—Kelso ever claim that you had assumed any liability?

A. No sir.

Q. Did he claim at that time that he thought any of the burden of the expense ought to fall on you?

A. No sir.

Q. He was insisting that Watts ought to bear it and for that reason you telephoned over to Watts to adjust the matter with him.

A. Yes sir: That is what he said.

Q. Did you prepare any response that Monday afternoon?

A. No sir.

Q. Did you proceed with the matter any further than that discussion?

A. No sir; I told him that they were insistently holding that property—that is Judge Utz—because they said there was no order and he was not going to keep that promise. Just as soon as I laid my eye on the order I said, "that ought to settle it;" and I told Mr. Kelso when he showed me the order, "Now, go up and deliver up that property."

Q. By the Court: What did you mean by "ought to settle it?"

A. I was insisting at the promise—

Q. I understand that. You say when you saw this order, you said "that ought to settle it?"

A. Yes sir.

Q. You mean by that that the property belonged to the Receiver of this Court.

A. There is no doubt about that.

Q. That is what you meant?

A. Yes sir. Judge Utz said "there is nothing in that order that don't relieve the situation," or words to that effect.

Q. By Mr. Smith: Now, as I understand you, you were advising the procedure as you have stated it heretofore, but Judge Utz was insisting otherwise?

A. Yes sir; that is it.

Q. Insisting that he ought not to take any procedure or recognize the matter and one reason he was assigning that the order had not been made?

A. Exactly.

Q. And when the order arrived, you thought that relieved the situation?

A. I thought that would end it and he would be satisfied. I was insisting all the time that the moral obligation ought to be carried out.

Q. On that afternoon or at any time during that Monday at your office, was there anything said in regard to whether you or Mr. Watts should attend Court here?

A. Yes sir; that was spoken of.

Q. Give us what was said in regard to that.

A. We had made up our minds—

By the Court: He asked you to tell what was said.

A. Let me see if I cannot give it to you. Mr. Watts said that he was coming and so did I. Judge Utz said, as we have not been cited, he preferred that we did not come.

Q. Is that all that was said?

A. I am trying to think. Minor things that made no impression on the mind are hard to remember. I can not say that is all but I know the result of it was that Judge Utz and Kelso did not want us to come.

Q. By Mr. Smith: Was there anything said by you to the effect or in substance that you would not come, that you could not afford to or would not testify against your friend Watts and that you would go to Jamaica before you would?

A. No sir.

Q. Or that you would go to Texas or California?

A. No sir; I never said anything at all of that character.

Q. You were not served with process in this court that caused your attendance?

A. No sir; it is voluntary.

Q. Did you at any time, or under any circumstances aid, advise, abet or encourage either the taking or the withhold-

ing of this property from Connor, the Receiver of the United States Court?

A. I did not.

Q. Were you ever at any time after you had known of the case, that is Wednesday, you say you first knew of it, knowingly guilty of any contempt of this court?

A. No sir.

Q. Did you at any time knowingly or intentionally violate any order of this court?

A. No sir. I never intended to violate any order of this Court knowingly at all.

Q. Did you ever advise or encouage anyone else to do so?

A. I did not, or any other Court, I might say.

Q. You have said that in the morning John Watts put the question to Kelso in regard to whether his brother W. W. Watts had incurred any responsibility by agreeing to indemnify Kelso in case of his accepting the Receivership or in any other way. Now, I will ask you whether or not John R. Watts put a question in substance the same to Judge Utz in the afternoon?

A. Yes sir; and he answered no and told him he did not have anything to do with it.

Q. Was anything said about either one of them giving an affidavit that W. W. Watts could use up here in court?

A. John Watts asked that and they said said they would give him the affidavit.

Q. There was no question of that kind as to you?

A. No sir.

Q. Nothing said about your being responsible?

A. No sir.

Q. I will ask you if at any time you ever prepared or assisted in the preparation of any order or pleading or paper relating to these transactions for Mr. Kelso except the signing of the paper you have heretofore spoken of?

A. I did not.

Q. Did he ever submit for your opinion, investigation or inspection any paper prepared for him relative to this transaction except the paper that you have mentioned?

A. He did not and I do not know that he went thoroughly over that one.

Examined by Mr. Fairleigh:

Q. You have stated to the Court that you went to New Albany, and whatever you did in these transactions, all of them, was for the sole purpose, as I understand you to say, of aiding Mr. Watts in accomplishing the purpose of his statement to this Court on the 17th.

A. That was my sole purpose.

Q. Was there any ulterior purpose—any purpose beyond that at that time or any ulterior purpose after that?

A. None whatever.

Q. Was there any agreement, understanding or intention on your part or on Mr. Watts' part, that anything else than that should be done by you?

A. No sir.

Q. Did you do anything else than that?

A. I did not and all that I did was tending towards that end.

Cross examined by Mr. Kealing:

Q. Who composed your firm?

A. M. A. Sachs, myself, and my younger brother J. G. Sachs.

Q. Did you or your firm represent any creditor in this M. Zier & Co. proceeding?

A. I will have to answer in this way:

Q. Just answer yes or no?

A. I do not know because my younger brother—

Q. Did you?

A. No sir.

Q. Prior to the time of your conversation with Mr. Watts when he asked you to go over to New Albany to help him, did you know anything of the condition of the M. Zier & Co. suit?

A. No sir.

Q. Nothing at all?

A. Absolutely nothing?

Q. Did you or your firm have any other business in the Floyd Circuit Court prior to that time?

A. Prior to what time?

Q. To the time you went over there to assist Mr. Watts?

A. At any time in my life?

Q. At that time, I will say?

A. Any other business?

Q. Any other business?

A. No sir I did not.

Q. Then anything you or your brother went over on was on this business?

A. I can only answer for myself.

Q. You do not know why your brother went over?

A. Yes sir I do.

Q. Why?

A. He went over representing Walters' Brewery that Mr. Hester can tell about.

Q. I asked you why he went over?

A. I am telling you; they were having some boilers completed over there.

Q. For whom?

A. For the Walters people.

Q. What had that to do with the M. Zier & Co.?

A. I do not know. I expect you had better let my brother explain that.

By the Court: Answer the question.

Q. Don't you know?

A. No sir.

Q. You have not heard from either of your brothers what the business was about,—answer yes or no?

A. Yes sir, I have heard.

Q. What was it about, what did they tell you?

A. They told me that M. Zier and Company had built some boilers or were about to build some boilers for the Walters that Mr. Hester represented, and they had put up some money and he was over there to have it finished.

Q. Walter in a sense was a creditor of M. Zier & Co.?

A. I can not say, I don't know?

Q. Then when Mr. Watts called on you or when you went with him to New Albany on Wednesday afternoon, you knew nothing of the condition of M. Zier and Company?

A. No sir.

Q. What did he tell you on the way over?

A. I have told it in my direct examination.

Q. Tell it again.

A. He told me in substance that he came up here to Indianapolis; that he appeared here with some papers from the Floyd Circuit Court; that some question came up about a telephone message that went over the wire and there seemed to be some misunderstanding, and it seems that some orders were entered in the Floyd Circuit Court that this court thought should not have been entered resulting from the telephone communication. The result of that was that he had promised the court here to advise his clients to deliver the property.

Q. Is that all he told you?

A. That is all I remember.

Q. Did he tell you this court had appointed a receiver for that property?

A. No, not that I remember.

Q. Did you not know when you went over to represent him that this court had appointed a receiver?

A. I may have heard so, I am not sure.

Q. I mean did not Mr. Watts tell you?

A. No sir not that I remember. It was simply—

By the Court: Just answer the question.

Q. Did you know that the receiver had been appointed by the Floyd Circuit Court?

Mr. Miller: It is usual when a witness answers a question directly that then he may make an explanation.

The Court: That is where an explanation is proper. This is a lawyer of thirty-one years' experience and I am going to require him hereafter to answer the questions.

Mr. Miller: Will not Your Honor permit him to explain?

The Court: Whenever I think it is proper I will. There is no explanation needed or necessary there. We may just as well understand now that these evasions and explanations will not be permitted any longer, you must answer the questions.

By Mr. Kealing:

Q. Did you know that a receiver had been appointed by the Floyd Circuit Court for the M. Zier & Co. property?

A. Yes sir.

Q. Did you know or did Mr. Watts tell you that there was a clash of jurisdiction between the two courts at that time?

A. No sir.

Q. When he told you that he had promised to advise that this property should be turned over to whom did you understand he had advised the property to be turned over to?

A. To this Court?

Q. Then did you infer that there was a clash of jurisdiction?

A. I could not gather that. I did not know what there was.

Q. Do you mean to say to this court that without fully knowing the conditions, you went over to represent him before the Judge of the Floyd Circuit Court?

A. I went over—

Q. Just answer that yes or no.

A. No, but I want to explain.

The Court: You may explain that.

A. All I knew was what Mr. Watts had told me.

By Mr. Kealing:

Q. He did not tell you that there was a receiver appointed by the United States Court, and you did not know that, is that correct?

A. I would say no, I don't think I did.

Q. Then when he told you that he had promised to advise that this property be turned over, you did not know to whom it was to be turned over?

A. No I did not.

Q. And yet you were going before the court to save him from the wrath of the Floyd Circuit Court?

A. Yes sir.

Q. That is all you knew when you went to appear before Judge Utz on Wednesday?

A. That is all.

Q. Did you go directly to Judge Utz's office when you reached New Albany?

A. That is my best impression, I do not know of any other place that I went to.

Q. At that time, had you any acquaintance at all with Charles Kelso?

A. No sir.

Q. Was there anything said about Kelso in Judge Utz's office on Wednesday night?

A. Yes sir.

Q. What was said?

A. Judge Utz asked me to go by Kelso's and ask him to come there Thursday morning.

Q. Asked you to go by?

A. Watts and me.

Q. Did he ask you or Watts?

A. It was addressed to both of us and I assumed—

Q. Had you ever met Judge Utz before?

A. Never had.

Q. What was the occasion of using Kelso's name Wednesday night?

A. I do not know.

Q. Did you know that Kelso had anything to do with this?

A. No sir.

Q. Had Watts told you?

A. He had not.

Q. Did you ask the court why he wanted Kelso?

A. No sir.

Q. Did you ask the court why he wanted you to come back?

A. I did not. I want to explain that last question. I assumed that he wanted me to come back with Watts next morning—

Q. I didn't ask you what you assumed, but what he said.

A. He said to go by Kelso's office and tell all the attorneys in the case that I want them here tomorrow morning?

Q. In what case?

A. He did not say what case, but I am giving you his language.

Q. You were introduced to Judge Utz for the first time that evening?

A. Yes sir.

Q. Did he greet you cordially.

A. Just about as angry a man as you could see.

Q. Did he greet you cordially or not?

A. I do not remember the greeting.

Q. He was very much enraged?

A. Soon after Mr. Watts began to talk—

Q. Did he speak to Mr Watts?

A. Oh yes I think he did.

Q. Now just tell us what the court said that night?

A. That evening?

Q. Yes?

A. I said that I had come over there with Mr. Watts as his friend and attorney.

Q. What for—what did you tell the court—I want to know your language as near as I can?

A. That he had been to Indianapolis and I think maybe the judge had known something of it—

Q. Just tell what you said—I don't care what the judge knew or didn't know?

A. I said Mr. Watts had been to Indianapolis and made a promise to turn over that property and I was there for the purpose of aiding him to do that and to expunge from his record certain papers that had been filed?

Q. Did you know when you told the judge that who the property was to be turned over to?

A. No more than I told you turned over to the court.

Q. How could you aid him if you did not know where it was to be turned over or to whom?

A. It was to be turned over to this court.

Q. You knew it was to be turned over to this court?

A. I have repeatedly said that.

Q. You knew this court had appointed a receiver?

A. I did not.

Q. Did you think the property would be turned over to the court itself?

A. I did not know whether it would be turned—over—

Q. As a lawyer did you know what that meant?

A. I knew what that meant.

Q. When Mr. Watts told you he had agreed to advise the turning over of this property to this court, as a lawyer did you know what he meant?

A. Certainly.

Q. Then you knew there was a receiver appointed or an officer to take it?

A. Ah! Certainly I did.

Q. That is what I have been trying to get you to say. Then you did know that there was a clash of jurisdiction as a lawyer?

A. No. I cannot admit that. I did not.

Q. Had you no idea what the trouble was?

A. None more than what Mr. Watts had told me.

Q. But if Mr. Watts did not explain to you fully and you were going to represent him, don't you think he ought to

have explained to you fully so that you would have known how to represent him in court?

A. He explained fully enough to me.

Q. Are you in the habit of going to courts without full information of the cases you try, is that your practice?

A. I think not.

Q. It was in this case?

A. No sir, I think not.

Q. The Wednesday night you went to Mr. Jewett's office I have—

A. I have no recollection of going to Mr. Jewett's office.

Q. Do you know Mr. Fitzpatrick?

A. Yes sir.

Q. Did you meet him and speak to him there?

A. Yes sir.

Q. And he said Hello Sachs?

A. Yes sir.

Q. You do remember that?

A. Yes sir.

Q. Your memory is changed now?

A. Yes sir.

Q. Did you not ask Mr. Watts or Henry Jewett to telephone to Mr. Kelso to remain in his office until you came?

A. I did not.

Q. Did not Mr. Watts?

A. I did not hear him.

Q. I will ask you if in the presence of Mr. Fitzpatrick and Col. Jewett, Henry Jewett did not telephone to Mr. Kelso and ask him to remain in his office until two gentlemen came there?

A. If he did, I do not know it.

Q. The absolute fact is that you have no memory on that subject?

A. I absolutely do not know that Mr. Jewett telephoned to Mr. Kelso.

Q. Why did you go to Mr. Jewett's office?

A. If I went there—

Q. You said you went there: Why did you go there?

A. For the purpose of telling Mr. Jewett that Judge Utz wanted to see all of the lawyers on Thursday.

Q. How did you know that Mr. Jewett was a lawyer in the case?

A. Mr. Watts knew who the lawyers were.

Q. Did he tell you?

A. When I say I individually, I take it that Mr. Watts was with me and he was seeing the lawyers.

Q. You say you went to Mr. Kelso's office that evening?

A. Yes sir.

Q. How long did you remain there?

A. I didn't stay there but a very few minutes, 10 or 15 minutes.

Q. Not over 10 or 15 minutes?

A. No.

Q. Have you told in your original examination all the conversation that occurred there?

A. Yes sir; to the best of my recollection.

Q. I will ask you if it is not true that you went there for the purpose of asking Mr. Kelso to become Receiver?

A. It is not so.

Q. I will ask you if you did not at that time ask him and advise him to become Receiver?

A. I did not.

Q. I will ask you if it was not talked about in the office that night, the question of whether there would be contempt proceedings in this Court and that you advised Mr. Kelso to become Receiver and told him never in your practice had you heard of a man being put in jail for a civil contempt or contempt in civil cases.

A. No sir; I said no such thing.

Q. Did not Mr. Kelso say to you that he would accept the appointment if you gentlemen, meaning you and Watts, would guarantee the costs in the case saying he was a poor man and was unable to fight other peoples' battles?

A. No sir; nothing of the kind was ever said.

Q. Did you not say to Mr. Kelso that night in his office that you thought the Floyd Circuit Court had jurisdiction?

A. I did not.

Q. You agreed, however, to meet next morning, Thursday at 9 o'clock.

A. I was directed to come back.

Q. By whom?

A. By Judge Utz.

Q. He didn't tell you why he wanted all the attorneys?

A. He did not.

Q. You came to New Albany on Thursday morning?

A. Yes sir?

Q. And went to the Court House?

A. Yes sir.

Q. From the Court House did you not go to Mr. Kelso's office?

A. On Thursday?

Q. Yes, you and Mr. Watts.

A. No sir.

Q. When you were there on Thursday, was Mr. Jewett sent for?

A. If he was I can not exactly remember. Mr. Jewett came in and out of there with some figures on one of those dates—

Q. I did not ask you that. Was he sent for Thursday morning?

A. I did not send for him.

Q. Was he sent for by any one to your knowledge?

A. Not to my knowledge.

Q. Who was in Judge Utz's Court room that morning besides yourself and Mr. Watts?

A. Mr. Kelso was there, and if there was any one else I do not remember.

Q. Was Mr. Jewett there?

A. My impression is that the younger Jewett was in and out and then the tall one came.

Q. You yourself had asked Mr. Jewett to come the night before—

A. I, no.

Q. Did you not say you went to his office?

A. Yes sir; but I did not say I asked him to come.

Q. It was Watts?

A. Yes sir.

Q. It was you that asked Mr. Kelso?

A. I don't know whether I did or Watts.

Q. Did you not testify originally that you asked him?

A. If I did it was true.

Q. What do you say now?

A. If I said it it is true.

Q. I want to know what you say now?

A. That is my best recollection.

Q. What did you talk about that morning?

A. Thursday morning.

Q. Yes?

A. I started to ask Judge Utz for a hearing on the question of expunging or striking out the papers that were objectionable—

Q. You wanted to expunge the record?

A. I did not quite get through with my answer please—to expunge the papers from the record and take the orders from the order book and carry out the promise that had been made to this court.

Q. You did not make this engagement with Judge Utz, did you, he ordered you back as an attorney?

A. Yes sir.

Q. When he came back—and you came back—what did he tell you he wanted you to come back for?

A. He didn't say a word.

Q. And without his saying a word you began expunging the record?

A. I did. Now I want to explain that. When I left the evening before—

Q. I don't care about the evening before. I want what occurred that morning.

By Mr. Miller: I think he has a right to explain.

The Court: But his explanations don't explain and when he is asked a single question on what occurred and each time attempts to explain, it gets a little bit monotonous. What is it you want to explain?

A. Simply to explain the court ordered me back I assumed it was for a hearing—

Q. By Mr. Kealing: I didn't ask you what you assumed. He ordered you back. He didn't ask you to come back. When you got back the next morning did he tell you what he wanted you to come for?

By the Court: Answer that question.

A. I don't remember that he did.

Q. But you started on the business you have detailed?

A. Yes sir.

Q. How long did it take for you to make your talk to the Court that morning?

A. I did not get a chance to talk very long before he interrupted me.

Q. How long did you talk is my question?

A. Not over five minutes.

Q. Why did he interrupt you?

A. Because he said he was not going to carry out that promise.

Q. That was about 10 o'clock, was it not?

A. No sir.

Q. What time was it?

A. I don't think we reached there much before 10.

Q. What time did you reach there?

A. I think it was in the neighborhood of 10 o'clock, somewhere in that neighborhood.

Q. If you got through in five minutes why were you there until noon in New Albany?

A. Just waiting for the Judge to give me a hearing.

Q. Did he tell you he would give you a hearing that day?

A. No sir; but he did not say he would not.

Q. You just sat around the court room?

A. Yes sir; there was other business being transacted and he was attending to other business and I thought he would get back to it, and in the meantime Mr. Jewett and the elder Jewett came in. Time passed like I have waited on courts before.

Q. When Mr. Jewett came in nothing was said about the M. Zier & Co. business?

A. Yes sir; the younger Mr. Jewett came in with some figures about this business and the elder Jewett came in

and explained in substance that his brother had been up here and Mr. Watts and had promised the Court—

By Mr. Kealing: I didn't ask you that?

By Mr. Smith: Can't he explain that?

By the Court: The whole answer is not responsive.

By Mr. Smith: I submit that he asked him what else was said.

The question was read by the reporter.

By the Court: Answer that yes or no.

A. Yes sir.

By Mr. Kealing:

Q. Did you take any part in the discussion that morning? Answer that yes or no.

A. No sir.

Q. None whatever?

A. None whatever.

Q. Why did you not go away then?

A. Waiting for a hearing.

Q. Did you get a hearing?

A. I did not.

Q. Did you ask for a hearing?

A. Yes sir.

Q. When?

A. That morning.

Q. After you asked it the first time did you ask it the second time?

A. Yes sir.

Q. At what time?

A. After Mr. Kelso had said that the property was delivered over.

Q. That was after you learned that the property had been delivered over. To whom did you understand?

A. I did not learn to whom.

Q. Did I not understand you to say in response to a question by the Court awhile ago that you learned it was to the Receiver of this Court?

A. Not from Kelso.

Q. From anybody did you learn?

A. I learned from Mr. Watts that the property had been delivered over to some officer of this Court or to the Court.

Q. On that Thursday morning?

A. No sir.

Q. Did you not state awhile ago that you learned on Thursday that this property had been turned over to the Receiver?

A. Yes sir; that is right.

Q. Did you not know who the Receiver was at that time?

A. No sir.

Q. Did you not know his name was Connor?

A. No sir.

Q. You never had heard it?

A. No sir.

Q. Mr. Connor's name was not mentioned in the Court room?

A. No sir. You remember I was a stranger there—

Q. But you were there on law business?

A. No sir.

Q. I thought you were there to represent your friend Watts?

A. Yes sir; but that was hardly law business.

Q. You think these attorneys here are hardly on law business to-day?

A. It is a matter of pleasure to them I assume.

Q. But it is law business. On Thursday about noon, you and Mr. Watts went back to Louisville. You returned to New Albany on Friday morning, did you not?

A. Yes sir.

Q. You were telephoned to come back?

A. Yes sir.

Q. By whom?

A. I do not know who 'phoned.

Q. Did you answer the 'phone; did you talk with the person who asked you to come over?

A. My best recollection is that I did?

Q. Did that party say who it was talking?

A. He did not.

Q. You went over without knowing who wanted you to come over?

A. I knew who wanted me.

Q. How did you know?

A. The party at the 'phone told me.

Q. Told you what?

A. That Judge Utz wanted me to come over.

Q. You didn't ask who the party talking was and did not know who it was?

A. No sir.

Q. But you went over?

A. Yes sir.

Q. Did he tell you at what time to come over?

A. Yes sir.

Q. When?

A. He told me to come over in the morning and bring Mr. Watts.

Q. That was the morning, was it not, that you signed the petition as attorney for the United States Tube Company?

A. Yes sir.

Q. I will ask you if it was not said by Mr. Kelso on the Wednesday meeting that he could not act as receiver because he was attorney of record for some of the creditors and you suggested that he could withdraw and become Receiver?

A. No.

Q. You say this petition that you signed was not written out by you on Friday?

A. No sir.

Q. And you did not read it very carefully, or did you?

A. I don't think I did.

Q. You swore to it?

A. Yes sir.

Q. Are you in the habit of swearing to things that you know little about without reading them carefully?

A. No sir.

Q. Did you in this case?

A. I took it for granted that I read it, I will assume the responsibility. I can't deny that.

Q. By the Court: You say you can't deny it?

A. I say I take it for granted—

Q. Was that what you said? Read that Mr. Reporter.

The answer referred to was read by the reporter.

Q. You knew at that time on Friday morning that the Receiver had been appointed by the United States Court?

A. Yes sir.

Q. You knew what his name was then, did you not?

A. From my personal knowledge, I can not say I did.

Q. You don't know.

A. I did not have any interest in it one way or the other.

Q. I will read you this: "Comes now the United States Tube Company by D. A. Sachs attorney and respectfully represents to the Court that on the 19th day of February 1903, the said New Albany Trust Company as such Receiver of said M. Zier & Co. did wrongfully, unlawfully and without leave of this Court turn over and surrender the possession of the M. Zier & Co. Boiler Plant located at the Northeast corner of Upper 1st or Pearl and Oak Streets, in the city of New Albany, Indiana, to one Fred D. Connor who is acting as Receiver in bankruptcy claiming to have been appointed by the United States District Court of Indiana sitting in bankruptcy." You swore to that?

A. Yes sir.

Q. By the Court: You say you can't deny that; that is because it is a matter of record?

A. No sir.

Q. Do you mean to say you would but for that?

A. No sir. What I meant was that I could not deny that I read that paper.

Q. By Mr. Kealing: When you swore to this did you believe what was in the affidavit.

A. Why certainly I believed it to the best of my knowledge and belief.

Q. Then you believed that this U. S. Court Receiver had no authority to take that property? And was wrongfully withholding it? Because that is what you swore to.

A. Is that what I swore to?

Q. Let me read it.

A. Let me.

The witness here read the paper referred to.

Q. Now I will read it. "Comes now the United States Tube Company by D. A. Sachs attorney and respectfully represents to the Court that on the 19th day of February 1903 the said New Albany Trust Company as such Receiver of said M. Zier & Company did wrongfully, unlawfully and without leave of this Court turn over and surrender the possession of the M. Zier & Company Boiler Plant located at the Northeast corner of Upper First or Pearl and Oak Streets, in the City of New Albany, Indiana, to one Frederick D. Connor, who is acting as Receiver in Bankruptcy, claiming to have been appointed by the U. S. District Court of Indiana." You swore it had been wrongfully turned over?

A. Yes sir.

Q. Was it true when you swore to it?

A. Yes sir; that the New Albany Trust Company wrongfully turned it over.

Q. You believed that when the New Albany Trust Company turned it over, they had wrongfully turned it over?

A. That was my opinion.

Q. Is it your opinion now?

A. It is my opinion that the New Albany Trust Company delivered that property to the Receiver of this Court without some order of the Floyd Circuit Court.

Q. Yes; but when you signed that affidavit you knew that Mr. Watts told you that he as attorney for this Court had agreed to advise that it be turned over?

A. Yes sir.

Q. You knew that the Court had ordered it turned over, did you not?

A. At that time?

Q. At the time when you made that affidavit?

A. No; I did not know that the Court had ordered it to be turned over, but that would not make any difference to me.

Q. Answer the question whether you did or not.

A. No sir.

Question by the Court: You say it would not make any difference to you whether this Court had ordered it turned over or not?

A. I would make Watts carry out his promise whether he had the order or not.

Q. That is what you meant to say a moment ago?

A. Certainly, I would make him carry out his promise whether the order had ever been entered.

Q. By Mr. Kealing: Further in this affidavit you ask that such New Albany Trust Company be cited to appear in chambers before that Court on the 21st of February, which was on Saturday. Tell the Court whether you didn't appear that afternoon in that Court.

A. On Saturday?

Q. Yes.

A. Yes.

Q. And you knew that you had asked that these people be cited to appear at 3 o'clock when you appeared?

A. I did not know a thing about it.

Q. You had signed that affidavit the day before.

A. I had signed it and left it with Mr. Kelso.

Q. You knew what was in the paper?

A. Yes sir.

Q. You did not sign it for fun?

A. No sir.

Q. You knew it was to be filed.

A. No sir.

Q. Do you mean to say that you signed and swore to a paper and left it in his possession and that you did not know it was going to be filed?

A. I did not know it.

Q. Do I understand you to say that to a stranger you had only met and known for twenty-four hours—on his request you made an affidavit of this kind, not knowing what he was going to do with it; do you want the Court to understand it that way?

A. No sir; he was to do just what I had told him to do.

By the Court: That is not the question.

The question was read by the reporter.

A. I did not. I knew what he was going to do with it if he did what I told him.

Q. If you believed and had advised the Receiver of the State Court, to file an intervening petition in here, why was it necessary to get a new Receiver, why could not the New Albany Trust Company file an intervening petition in this Court, why was it necessary to make this affidavit?

A. Judge Utz had repeatedly said he was going to remove the New Albany Trust Company and appoint a new Receiver.

Q. That was because they said they would resign?

A. I don't know. Judge Utz said he was going to remove the old Receiver and appoint another.

Q. Tell the Court if you had no business in New Albany excepting to defend Watts, why was it necessary for you to give them any kind of advice as to what to do in this receivership matter to get mixed up in it?

A. I did not give them any advice.

Q. Did you not say that you advised the filing of an intervening petition in this Court?

A. I gave it as my opinion that that was made to settle the difficulty and it would relieve the situation, to come in with a plea and get the judgment of this court and then if they wanted to proceed further that was with them.

Q. That is the only reason you can give as to why you signed and swore to this affidavit?

A. That is the only reason I give. For that purpose and I thought it would relieve the situation.

Q. I will ask you if it is not true that on that day, almost all day, you were in Mr. Kelso's office helping him to draw this petition and the order which follows?

A. I was not.

Q. I know his stenographer?

A. When I see her, I don't know her.

Q. You remember a stenographer being there?

A. She swore me to the petition.

Q. I will ask you if it is not true that while these other people were at the cafe or saloon drinking you were at Mr. Kelso's office helping to draw these papers, not only the petition, but the order of the court and all papers necessary to take this property and that they were drawn up at that time?

A. I was not there, no sir.

Q. Anticipating that the Receiver would refuse?

A. No sir.

Q. By the Court: What is the name of Mr. Kelso's stenographer?

Mr. Kelso: Bertha L. Scott.

The Court: I want a subpoena issued for her.

Q. By Mr. Kealing: Confine yourself now to this Thursday and tell this court how much time you spent in Mr. Kelso's office on that day?

A. Not over an hour.

Q. Was it an hour continuously?

A. I think it was just during that noon hour.

Q. What were you doing when you were in there for the hour?

A. Reading a paper—it may not have been that long. It was a short time.

Q. Did you dictate any paper to the stenographer on Thursday?

A. I did not.

Q. I will ask you if it is not a fact that you sat in the back and that you and Mr. Kelso, or Mr. Kelso dictated this petition and the order and the other papers and at times you made suggestions as to what to put in the papers?

A. No sir nothing except that petition or some papers he had and I saw it.

Q. By the Court: Ask him whether he dictated or suggested to this stenographer who has been named?

Q. By Mr. Kealing: State whether you dictated it to the stenographer or whether while Mr. Kelso was dictating it or any part of it in the presence of the stenographer you dictated anything or suggested anything to Mr. Kelso?

A. I did not.

Q. You say to the court that while this was being prepared you were not present. Is that what you want to say?

A. Which paper?

Q. The petition or the order accompanying it?

A. I was present when the petition was prepared. I said that.

Q. Who dictated that?

A. Mr. Kelso, I did not.

Q. You heard it dictated?

A. I did not. I was sitting in the back room.

Q. Did you read it after it came to you?

A. Yes sir.

Q. And then you swore to it?

A. Yes sir.

Q. Did I understand you to say that at no time have you been in this Zier & Co. plant?

A. No I don't think I ever was there in my life.

Q. I want you to state?

A. No.

Q. I will ask you if on Saturday afternoon in company Mr. Kelso you did not go through the M. Zier and Company plant and that Frederick Ruoff was also present with you?

A. No sir.

Q. And if you didn't make the remark after going through the plant that the whole thing was not worth having any fight about?

A. No sir.

The Court: Issue a subpoena for Mr. Ruoff.

Q. Do you know Mr. Ruoff?

A. I do not know that I know him. I was never introduced to him.

Q. And you say to the court that neither on Saturday the 20th of February, 1903, or any other day—

The Court: That is the 21st.

Q. Or any other day prior to that time or since that time you have been in the M. Zier & Co. plant?

A. No sir I have not been in it.

Q. On Friday afternoon were you at this cafe at any time?

A. No sir.

Q. What time did you go to Louisville that night?

A. Friday?

Q. Friday? yes.

A. At dark, about six o'clock, at dark or about in that neighborhood.

Q. What time did you get to New Albany that morning?

A. About ten o'clock.

Q. And you did not leave New Albany until dark?

A. No sir.

Q. What were you doing there all day except the hour you spent in Mr. Kelso's office?

A. Waiting to be heard in connection with the Watts matter.

Q. Where were you waiting?

A. In the court room—in chambers.

Q. I understood you to say you stayed there about an hour in your original examination.

A. In the morning?

Q. At any time. When you tilted your chair back.

A. That was in the afternoon when they all went out.

Q. You sat there about an hour?

A. It may not have been quite that long.

Q. Where else did you stay from ten o'clock till dark?

A. From ten o'clock in the morning until the noon hour I was at Judge Utz's office and from there I went to Mr. Kelso's office, from there I went to get some oysters and then Judge Utz ordered us back at 3 o'clock.

Q. When you got there about three o'clock how long did you stay there?

A. I was there perhaps until half past four or five.

Q. When was it Judge Utz was invited out to the cafe?

A. Friday?

Q. Don't you know that that party spent nearly the whole afternoon at this cafe?

A. I don't know where they spent their afternoon.

Q. You didn't spend your time with them?

A. No sir?

Q. Where were you?

A. Part of the time in Judge Utz's office lying or sitting in a chair and I was walking around looking for Mr. Watts and my brother and they were looking for me.

Q. Where?

A. They told me they came back to the court house to look for me and I had gone out to look for them and we missed each other.

Q. They were out to this cafe and you were there and you were there for the purpose of squaring Watts with the Judge, was that the reason you were with them?

A. I wasn't with them.

Q. You did not have any part in that?

A. No sir.

Q. How did you spend Saturday afternoon with them?

A. No sir to the best of my recollection I was not with them Saturday afternoon.

Q. You heard Mr. Watts testify?

A. Yes sir; I cannot help that.

Q. You say you were not at the cafe?

A. No sir.

Q. Neither day?

A. Friday I am certain I was not. I may have gone in there Saturday.

Q. Do you mean to say that they held court from 3 o'clock to six, until dark?

A. No sir.

Q. The Judge was not there with you?

A. No sir. I was waiting for my brother.

Q. Do you know where the U. S. Clerk's Office is in New Albany?

A. Yes sir.

Q. You were there that day were you not?

A. Friday?

Q. Friday.

A. No sir.

Q. Do you know Mr. Cardwell, the deputy U. S. clerk?

A. I know him when I see him and I was introduced to him.

Q. Do you say to the court that you were not in Mr. Cardwell's office at any time on Friday?

A. No sir, I was not.

Q. You were there on Saturday?

A. I think it was Sautrday.

Q. Looking at some records?

A. Mr.—

Q. Answer the question.

A. Looking for a record.

Q. What record were you looking for?

A. The order of the 17th.

Q. What else did you look for besides the order of the 17th?

A. Nothing.

Q. Nothing at all?

A. Not that I know of.

Q. I will ask you if you did not look over the records of the whole case on Saturday while you were there?

A. I did not.

Q. And you say to this court that you at no time said to Mr. Kelso in the presence of Judge Utz that you would be responsible for the costs in this case if he would go ahead in the new receivership—if he would take the receivership,—that you would be responsible for the costs?

A. I never said it.

Q. You spent Wednesday afternoon, all of Thursday forenoon, all of Friday, nearly all of Saturday in New Albany solely for Mr. Watts' benefit?

A. That is true.

Q. And you continually advised Judge Utz and Mr. Kelso that they ought not to pursue this matter any further in the way of getting a new receiver?

A. I did not advise them at all. I gave it as my opinion.

Q. You advised them to take another course.

A. I did not advise them at all.

Q. You gave it as your opinion?

A. Yes sir.

Q. Did they ask you for that opinion or were you around there giving your opinions just free hand?

A. They were asking me for my opinion on hypethetical questions.

Q. Who?

A. Judge Utz.

Q. Give me one hypothetical question that he put to you.

A. He put to me this hypothetical question, whether it would not be advisable for the Floyd Circuit Court to undertake to take from this court the M. Zier & Co. plant and I told him it would not be in my opinion.

Q. When was that hypothetical question put to you?

A. Thursday or Friday, I cannot remember.

Q. Any others that you remember that were put to you?

A. Not specially.

Q. Judge Utz and Mr. Kelso were continually insisting that this matter should be pursued further and a new receiver appointed, is that right?

The Court: Answer yes or no.

A. I cannot answer it yes or no. I can answer yes to one part and yes to the other part.

The question was read to the witness.

A. Judge Utz said that he was going to appoint another receiver.

Q. I will ask you if there was not an arrangement made between you and Kelso that when this summons or citation was issued Watts left Mr. Kelso's office and said in your presence that he would go to Goodbug's and wait there to be served on Friday?

A. No sir.

Q. I will ask you if on Saturday you did not say to Judge Utz in the presence of Mr. Kelso and the deputy clerk of Floyd County and Mr. Watts—if you did not ask this question of the judge; what is the statute here concerning the militia? And if the Judge didn't say to you, "why do you want to know that?" And if you didn't say, "I never start anything but I end it. I am a great state's rights man."

A. I did not say that, but I will tell you what I did say. What date was that?

Q. On Saturday.

A. I do not know that it occurred on Saturday, but it may have occurred on Saturday again. It is exactly what I said to Judge Utz when he was insisting on taking that property back after it had been delivered to your receiver. I told him then and there not to take anything like that, because if he did he might just as well get ready with his soldiers.

Q. And you did not say that you never started a thing but you went to the end and that you were a great state's rights man?

A. No sir.

Q. Didn't you say that a dozen times during the three or four days you were there?

A. No sir.

Q. Didn't you say to Mr. Kelso that you were a great man for records?

A. I did not.

Q. And relate to him an experience you had had with the U. S. District Court of Kentucky on the record question?

A. I did not.

Q. I will ask you if it is not true that you and Kelso and the Judge of the Circuit Court together arranged that this addition made to the order of February 14th concerning Mr. Kelso should be put upon the record?

A. No sir.

Q. And if you didn't advise it should be done?

A. No sir.

Q. Do you say to this court that in your office you did not say that you would go to Jamaica than come to Indianapolis because you would have to testify against your friend Watts?

A. I did not say that in my office or at any other place, or at any other time, or anything like it.

Q. Do you know the deputy clerk of the Floyd Circuit Court?

A. No sir.

Q. Is it not true that when the sheriff went out to serve it after the petition was signed and filed, that is the petition you signed, you went through from the office of Mr. Kelso and looked over the law with him and took down the statutes governing the law of Indiana that afternoon that the petition was signed by you in his office?

A. No sir I never examined an Indiana statute in his office or any place else that I know of.

Q. I will ask you if in the county clerk's office of Floyd County on Thursday or Friday the 19th or 20th you did not in the presence of Edgar Martin, William Rath, deputy clerks of Floyd County, advise and insist that Mr. Kelso go ahead with this proceeding to have a new receiver appointed?

A. No sir I did not.

Q. Nor said anything in their presence about it nor gave any advice on that subject?

A. No sir.

Q. Of course you were surprised when you were cited to appear in this court for contempt?

A. Yes sir, certainly.

Q. When did you first learn that you had been cited?

A. Sunday night—I mean Saturday night.

Q. By whom?

A. I think it was Mr. Kelso that telephoned.

Q. You wanted them to get together that night?

A. No sir; they telephoned me to come over and I said I could not come at such an hour.

By the Court:

Q. You say they? Who?

A. I think Mr. Kelso. I do not know whose office that was.

Q. Judge Utz and Mr. Kelso wanted to see me they said, I don't remember the words, that there had been a citation come down.

Q. Did Mr. Kelso ask you to act as his attorney in his case?

A. He did not.

Q. The only time he ever asked you to act as his attorney was when he asked you to act as his attorney in this receivership and you refused it?

A. That is correct.

Q. What reason did you give for refusing to act as attorney for the receiver?

A. I had as much business as I could attend to on the other side—

Q. You were attending to business on this side?

A. I was in the interests of a friend and lawyer.

Q. After all the four and a half days that you spent there —all the nights and days, until dark—you did not accomplish very much?

A. No, I certainly did not. I will regret it all my life.

Q. That was because Judge Utz was so mad all the time that you could not get any satisfaction?

A. I did all I could do to get the matter straightened out.

Q. You have filed a written response in this case?

A. Yes sir.

Q. You both deny that you are guilty of contempt in that response and also set up that the orders by this court are void.

By Mr. Fairleigh: That is a record and speaks for itself.

The Court: He has a right to ask him. It is preliminary to something else.

A. Yes.

Q. Part of that was prepared in Indianapolis and part in Louisville?

A. My best impression all prepared here.

Q. Part in ink and part in typewriter?

A. Really I don't know.

The Court adjourned until 2:00 P. M.

THURSDAY, MARCH 12, 1903.

AFTERNOON SESSION.

The Court met pursuant to adjournment.

John R. Watts called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Flexner:

Q. Please state your name.

A. John Richard Watts.

Q. Your are a member of the firm of W. W. & J. R. Watts?

A. Yes sir.

Q. And brother of W. W. Watts the defendant here?

A. Yes sir.

Q. Were you present at a conference in the office of Messrs. Sachs on Monday, February 23rd?

A. Yes sir?

Q. Who else was there?

A. In the morning my brother, Mr. Morris Sachs, Mr. Dave Sachs, Mr. Kelso, Judge Utz and myself.

Q. Will you please state fully what occurred at this conference on Monday morning, February 23rd?

A. On Monday morning we received a telephone message—

Q. When you say "we" who do you mean?

A. The office; my brother talking at the telephone, to come over to Sachs' office; we didn't go immediately but waited for possibly an hour or may be an hour and a half, and another telephone message came and thereupon we went to Messrs. Sachs' office together. When we arrived there, we went into the back offices and I was introduced to Mr. Kelso and there was then Mr. Maurice Sachs, Mr. Dave Sachs, Mr. Kelso, my brother and myself present.

Q. Was Judge Utz there that morning?

A. No sir. After the introduction Mr. Dave Sachs spoke to my brother. He had,—there were a number of papers on the table,—and he had some paper in his hand. He said, "Will, did you know an order was entered in the Federal Court at Indianapolis on the 17th?" My brother said, "No, I did not. "He said, "Well here is the order" and he read it, part of it; the first part of it with regard to the appearance, etc., and the surrender of the property and he says, "Now there, I say, that settles it."

Q. Who said that?

A. Mr. Dave Sachs. I remember that very distinctly. There was some little discussion about the matter as to the entry of that order and then some paper was read, I think it was the basis or the foundation for the citation, or the copy of the citation wherein in the latter part of it my brother was named with Mr. D. A. Sachs and Mr. Kelso as combining together or something of that sort to retake this property from the Federal Court. Upon the reading of that I turned to Mr. Kelso. No I turned to Mr Sachs first, Mr Dave Sachs; I said, "Mr. Dave, has W. W. ever done anything of that nature in this case? Has he ever by any word of his, or by any action of his or by anything from which you could draw the inference that he desired the State Court to retain this property as against the United States Court?" Mr. Dave said, "No, he has not." I then turned to Mr. Kelso and I said the same thing to Mr. Kelso, and he said, "No, he has not." I said, "Well then, Gentlemen, I don't know, I am the youngest man in the crowd but it does seem to me it is entirely proper, if W. W. has done nothing up to this time, that he should withdraw from this conference." And I

turned to Mr. Maurice Sachs, who was sitting very near the fire, and I said, "Mr. Maurice, what do you say?" And he said, "Well, John, I don't know; it seems to me we are talking this matter over generally in regard to the responses; I don't see why Will shouldn't stay, for we are simply talking the matter over." "Well," I said, "I yield" and I did yield and we did stay there for sometime. Nothing of any importance that I remember was talked over, at least that I recall now during the morning, but we left the office of the Sachs. Oh, yes, during the morning somebody came back from the front offices and called Mr. Dave Sachs to the telephone; somebody said it was Judge Utz at the telephone; Mr. Dave came back and said he, "Judge Utz will be over here at 3 o'clock. Sometime after that we left. We went to our office and there met—

Q. When you say "we" who do you mean?

A. My brother W. W. and myself. We there met Mr. Harry Jewett. He was over there or he came immediately after we got there. Mr. Jewett said that his brother was engaged in some railroad matters and that he couldn't come up here and make a defense for my brother. We talked there for sometime with him about other matters and then a telephone message came as I remember it again calling us to the Sachs office.

Q. Was that in the afternoon?

A. Yes. This was in the afternoon. I should say considerably after 3 o'clock. No, I couldn't fix the time. We went back there and when we got in I think Mr. Joe Sachs and Mr. Dave and Mr. Maurice and my brother and myself were that time. Whether Mr. Joe was there when we came in I am not certain, but I think he was. I was then introduced for the first time to Judge Utz.

Q. Who was there in the afternoon when you came in?

A. The gentlemen I have mentioned. I think all of them were there, Mr. Joe, Mr. Dave, Mr. Maurice, Judge Utz and Mr. Kelso. I again said in the afternoon turning to Judge Utz: I said, "Judge, this morning I asked Mr. Dave Sachs whether or not my brother by any word of his or by any action of his or by anything from which any of these gentlemen men could draw the inference, whether by anything he was seeking to have the State Court retain the possession of this property or to get it back by any means as against the United States Court."

I was looking directly at Judge Utz because I was extremely interested in the matter and Judge Utz says, "No, he did not; on the contrary he has urged always the getting up of the property." I again said to Judge Utz,—I mean to the party "Well, gentlemen, if that is the situation it seems

to me—really I don't want to insist on it—but it does seem to me the proper thing to do is for W. W. to withdraw from this meeting." And I again turned to Mr. Maurice, and Mr. Maurice urged some such reason as he did in the morning that we were simply talking the matter over to see what could be done and he said he saw no necessity of our withdrawing and we didn't withdraw.

Q. Was anything said that afternoon about affidavits, or in the morning?

A. Oh yes, yes sir; yes in the morning I asked Mr. Kelso and I asked Mr. David Sachs, I said, "Well then, Gentlemen, I would like very much for you to give me affidavits to this effect," and both of them agreed that they would give me affidavits showing that W. W. wasn't Mr. Kelso's attorney and that he had nothing to do with the re-taking of the property, along the line of my questions in the morning. After I asked Judge Utz in the afternoon he said he would give me an affidavit. Sometime after that, I can't undertake to say how long, there was still some discussion about the law of the case. I didn't know anything about the law, only that I heard the conversation. Sometime during that conversation, Mr. Kelso was on a side of the room apart from us in a measure, he said, "Judge Utz let me talk to you a minute;" and Mr. Kelso and Judge Utz went out. In a few moments the doors shook, the lock had caught, the snap had caught and I let them in and Judge Utz came in and sat down and Mr. Kelso walked up and down the floor with his hands in his pockets, just pacing up and down, and finally he said, "Gentlemen, I want to know where the costs are coming from in this case; I am going to have to go to Indianapolis and employ some lawyer and its going to cost a whole lot of money to do it, and now I want to know where the costs are coming from." He said, "I will have to—," as I remember it, he said, "I will have to pay some lawyer up there a thousand dollars to defend me in this matter."

W. W.—I mean Mr. Dave Sachs said to W. W. "Will, Mr. Kelso thinks you ought to raise this money." Will said, "Me?" In quite a surprised tone, and Mr. Dave said, "No, not you as attorney; I don't mean as attorney; I don't think he means that, but he thinks your clients ought to do it." W. W. said, "Why, I can't get my clients to do that; I can't ask my clients for that." Just how that ended up I don't know but right along in there Judge Utz spoke up and said, "Why, Kelso, or Charlie"—I don't know which he called him, "I have got some money in Court with which to pay for the expenses of this thing and he says the expenses are not going to be anything like what you say they will be, or can't be as much as you say;" and there was some little

conversation then and Mr. Kelso put on his coat and he said, "Well, I am going up and telephone for a lawyer, telephone to my lawyer, and I am going up there to-night." He turned as though he was to go and Judge Utz said to him, "why, who are you going to employ? Wait a minute, who are you going to employ?" He said, "Why, he said I am going to telephone up to Ferd Winter." Judge Utz said, "Well, what is he, a Republican or a Democrat?" Mr. Kelso said, "Well now, I think he said, I don't know or I wouldn't be sure of that, but he did say, "That don't matter; he is in that waterworks case with Noble Butler"; and Judge Utz says, "Oh well, if that is the case, go on; that is the man you want to get; go on and telephone to him." And Mr. Kelso left the office. He was gone for a little while and he came back after a few minutes and said he wasn't able to get Mr. Winter at the telephone, and as I remember it in just a few minutes we all separated.

CROSS-EXAMINATION.

QUESTIONS BY JOSEPH B. KEALING, ESQ.

Q. Did you ever get those affidavits?

A. No I did not.

Q. Did you ever get an affidavit from Kelso?

A. No sir.

Q. Did you ever ask him for one?

A. Yes sir.

Q. When?

A. In the morning.

Q. What morning?

A. That morning of the 23rd of February.

Q. Where?

A. In Mr. Sachs' office.

Q. Did you ask him to go and write out an affidavit for you?

A. No sir, I did not.

Q. I mean after that did you ever ask him for an affidavit from that time to this?

A. No sir, I did not.

Q. Why didn't you?

A. Why because the thing transpired on Monday and as I understood it he left on Monday night. I may be mistaken about that, but I had the idea, he said he was going that night.

Q. Is that the reason you didn't ask him for that affidavit?

A. Yes sir.

Q. Because he wasn't there?

A. Yes sir.

Q. Did you ever go to New Albany to see him about it?

A. Never did sir.

Q. You know that all Mr. Sachs had to do in this case was to assist your brother?

A. No I didn't know anything about the case.

Q. You knew Mr. Sachs wasn't in this case as a lawyer didn't you?

A. I didn't know anything about the case.

Q. You didn't?

A. No sir.

Q. Do you mean that your firm was representing the Receiver there and you knew nothing about what was going on.

A. Absolutely nothing. I would like to explain that answer in this way.

Q. All right.

A. That mine and my brother's business, while we are a firm or co-partners, we never undertake to handle each other's affairs and we never enter a case jointly if we can help it.

Q. Well was it your present understanding there that Mr. Sachs had been attorney in that case?

A. I don't think I had any understanding about Mr. Sachs.

Q. Didn't even know that your brother had telephoned him to go over to New Albany to help square himself with the judge?

A. All I know is, sir, that on a day in the latter part of the week previous to this Monday Mr. Sachs came into our office while I was there and he said, "Will, I got a telephone to go to New Albany." I think he said Mr. Kelso telephoned him; I won't be sure of that. He said Judge Utz wants both of us over there; and W. W. said, "Dave, I won't go" and Mr. Dave said, "well, Will, when a man calls for you to come you had better come; you are in contempt of this Court possibly;" and we three talked about it a few minutes, and I had no idea of a contempt of this Court, I thought the contempt was of the New Albany Court and I urged W. W. to go. There is one thing I want to mention that I had overlooked, if I may do it at this point.

Q. Go ahead.

A. While I think of it, of the conversation about coming up here on that Monday. May I put it in here?

Q. Go ahead.

A. On Monday afternoon it seems to me my brother said, it occurred in the morning first, my brother asked Mr. Kelso

what about his coming up here and Mr. Kelso said that he had seen Mr. Hester upon the street; as I remember it he said he had gotten those papers from Mr. Hester that he had there with him and he said that Judge Anderson was hot after W. W., and Kelso said, "If I were you I wouldn't go;" then in the afternoon by brother said, "Judge Utz what do you think about my going up there?" He had asked Mr. Kelso in the morning. Judge Utz says, "Well, I wouldn't go" and W. W. says, "Well, Judge, if you say for me not to go I don't know whether I will go or not; I am inclined not to go." And I said, "Now, if you will let me interrupt again Gentlemen, I don't take that position; I think that if W. W. is in contempt of any forum on earth it is his place to be there," and we left there with the intention of coming up here. I beg pardon for interrupting.

Q. All right, go back then; did you know that your brother had been cited for contempt of the Court at New Albany?

A. Not as a citation I didn't.

Q. Answer that question.

Preceding question read by the stenographer.

A. I am doing it the best I can. I understood he was in contempt of that Court but I didn't know he had been cited.

Q. Did you know he was in trouble at New Albany?

A. Yes, sir.

Q. Do you mean to say to the Court that he didn't tell you that he had taken Mr. Sachs over there to help him out?

A. Yes, sir; I mean to say that.

Q. Did you know he had been to Indianapolis before the Federal Court?

A. I knew that; yes sir.

Q. Did you know what he was here for?

A. I think I did. I saw the—

Q. Just answer the question; what was he here for?

A. As I understood it he was here to present some petition to this Judge to avoid the clash of jurisdiction.

Q. Then you knew there was a clash of jurisdiction?

A. No I did not.

Q. Why do you say that?

A. Because I knew he had come up to avoid it.

Q. Didn't you answer that he came up here to present some phase of this case to prevent a clash of jurisdiction?

A. Yes sir.

Q. Where did you get that information?

A. From the pleadings as I heard him dictating part of them in the office and from the newspaper.

Q. And he was trying to prevent a clash of jurisdiction. Did you ask him after he came back what the result of his visit was?

A. I don't believe I could say positively whether I did or not, but I am almost sure I did not.

Q. He didn't tell you?

A. No sir.

Q. You office together?

A. Yes sir, we office together; we don't office together either; his office and mine are separate.

Q. Are you partners?

A. Yes sir.

Q. Well you didn't know then, that he was a good deal troubled and grieved from his actions or looks after he came back from Indianapolis, did you?

A. Yes I did on that day that he came back; I only know it this way, if I may say it.

Q. I don't care how you knew it. Did you know it?

A. I knew it simply from our bookkeeper who told me that W. W. was at his hotel sick on Thursday afternoon.

Q. Did you see him that afternoon?

A. No sir, I did not.

Q. When did you next see him?

A. I don't know now when I did see him.

Q. Did you know up to the time he was cited for contempt in this Court on Saturday night or during that week that he was over at New Albany, didn't you know that he apparently was in trouble with the Court?

A. Which Court?

Q. Either Court or both?

A. I knew on the day that Mr. David Sachs came to our office and that is the first and the only information I had of it as I remember it now, that there was either a contempt proceeding or W. W. was afraid of a contempt proceeding in the New Albany Court.

Q. What day was that?

A. I couldn't undertake to tell you.

Q. How soon after he came back from Indianapolis?

A. I don't know just when that was.

Q. He came back that Tuesday night?

A. Yes sir.

Q. How soon after Tuesday night the 17th of February was it?

A. I can't place the date, sir.

Q. He was in the office on the 18th after he returned from Indianapolis, wasn't he?

A. I couldn't give you a positive answer on that.

Q. When during that week then did you first see him?

A. I don't believe, sir, I could give you an answer; I don't know.

Q. Did you see him that week?

A. Yes sir.

Q. When you did see him could you tell from his appearance or anything he said to you that he was in trouble or appeared to be in trouble with the Court?

A. Now to give you—

By the Court.

Q. Well answer the question.

A. I can't give it Judge—

Q. If you can't answer, say so.

A. I can't answer it except in my own way if you will allow me.

The Court: Read the question.

Q. Question read by the reporter as follows: "When you did see him could you tell from his appearance or anything he said to you that he was in trouble or appeared to be in trouble with the Court?"

A. I want to do it, Judge—

Mr. Kealing: I will withdraw that question.

Q. When you saw him that week did anything in his appearance indicate to you that he was in some kind of trouble. Now answer that yes or no.

A. Yes.

Q. Very well.

A. Now I want to offer an explanation with that.

Mr. Kealing: We don't need the explanation now.

The witness: I want to offer one.

Mr. Fairleigh: He has got the right to explain it.

Mr. Kealing: Go ahead.

The Witness: I don't know where I got the information but I did know—

Q. I haven't ask you about information. I am asking you about his appearance. I haven't ask you anything about your information.

A. I can only explain it in my own manner. I am doing the best I can.

Q. Now from anything he said to you that week did you know that he was in trouble with either the court at Indianapolis or the court at New Albany?

A. Nothing except that morning when Dave Sachs and he and I had a little conference there.

Q. What morning was that?

A. I don't know.

Q. Was that before Sunday?

A. Yes sir.

Q. Was that before he was cited for contempt in this court, the United States Court?

A. I don't know when the citation issued from here. It was before I knew about the citation.

Q. What was that conference about that you and he and Sachs had?

A. Going to Judge Utz'.

Q. What was said at that conference between you, your brother and Sachs before you went to Judge Utz'—before they went to Judge Utz.

A. Mr. Dave Sachs came into the office, I think he said Mr. Kelso had telephoned to him to come over. My brother said, "Well, I don't want to go;" Mr. Dave said, "Well Will, you know when a man telephones for you you had better come; I think you had better go over there." And W. W. turned to me and asked me some question and talked generally about it and finally concluded that it was a matter of policy for him to go simply to conciliate the matter.

Q. Did he go?

A. I don't know except he quit the office.

Q. Now you may tell the Court when your brother came back from Indianapolis on Tuesday night the 17th, the following day, or any day thereafter prior to Saturday when he was cited for contempt, whether he told you what had transpired at Indianapolis about his promising to advise that those goods be turned over.

A. I frankly say I don't know.

Q. Then you don't know whether he told you or not.

A. I can't say whether he told me or when he told me; I don't know where I got that information.

Q. Did you know on Saturday the 21st of February—that was the day that you heard of these contempt proceedings in Indianapolis—prior to that time did you know it?

A. I beg your pardon. Let me see. You say Saturday?

Q. I understood you say you heard of it Saturday night?

A. No I didn't say that. Monday was the first I heard of it.

Q. Prior to Monday—prior to Monday, the day that you heard that he was cited for contempt of the United States Court, did you know from any source what had transpired in Judge Anderson's Court between the Court and your brother on February the 17th?

A. I think I had known generally something of it.

Q. Who told you?

A. I think our bookkeeper told me of it.

Q. Had your brother said anything to you on the subject?

A. I couldn't say whether he did or not; but I don't remember anything he said to me on that subject.

Q. Do you mean to say then that during that whole week that your brother told you nothing of his troubles either with this Court or the New Albany Court?

A. No I don't mean to say that.

Q. What do you mean to say then?

A. I mean to say I never knew anything of the trouble as to the contempt proceedings in this Court until Monday; from some source, I don't know where I got the information, I understood he came home sick and humiliated and had gone to bed from his appearance before this Court here, but sometime before—

Q. (Interrupting) Did you understand that from him?

A. Wait a minute; I did know of either some contempt proceeding or some proceeding that was feared for contempt in Judge Utz's Court on the morning when we three had the conference that I spoke about.

Q. When did he go to bed after he came back from Indianapolis?

A. The only thing I know of it was that day the bookkeeper told me and I wouldn't like to say the exact date.

Q. Did you go to see him?

A. No sir.

Q. Didn't see him at all while he was in bed there?

A. No sir.

Q. Then you knew nothing from what your brother told you about his troubles in New Albany and about his getting Mr. David Sachs to go to New Albany to square himself with the Court because the Court was mad at him? You knew nothing about it?

A. Yes, I did the morning Dave Sachs came over there.

Q. I mean prior to that.

A. No sir.

Q. He didn't tell you?

A. No sir.

Q. Not a word?

A. No sir. I don't know that I positively had seen my brother—

Q. (Interrupting) At this conference you asked the question as to whether or not your brother—

The Witness: (Interrupting) I would like to explain that, Judge.

Mr. Fairleigh: He has the right to explain his answer.

The Court: His testimony consists mostly in explanations.

Mr. Kealing: If the Court please, he said he didn't see him.

The Court: If Counsel on the other side want to draw that out they may do it but this witness explaining instead of answering and explaining every answer will have to stop.

Mr. Fairleigh: Your Honor knows how difficult it is to state the facts just as they are unless an opportunity is given for explanation.

The Court: I do not want any discussion about it. I understand the rule is to answer the question first, and not

only that but Counsel have the right to re-examine or cross-examine. I don't want any more of these voluntary explanations.

Q. Now, Mr. Watts, I understand the first you knew of these contempt proceedings at Indianapolis was on Monday?

A. Yes sir.

Q. Had you seen your brother on Sunday?

A. No sir.

Q. Before the Monday you heard of it?

A. No sir.

Q. Where was your brother on Sunday and Monday? You didn't see him on Sunday? Where was he on Saturday prior to that do you know?

A. No I do not.

Q. You knew he wasn't at the office didn't you?

A. No I did not.

Q. Why?

A. Why, because I am in the court house a great part of my time. I am a busy man.

Q. How late do you hold court over at Louisville in the evening?

A. It depends entirely on the case you have.

Q. Court adjourns at five o'clock?

A. Yes sir.

Q. Well, if your brother was over at New Albany three or four days until after dark didn't you think it a little strange that he didn't appear at the office?

A. That didn't present a strange situation to me.

Q. You didn't stay at the court house until dark on Friday and Saturday?

A. No, sir.

Q. And you thought it was nothing strange for him to be there?

A. I didn't know he was there.

Q. You know it now don't you?

A. I know it now.

Q. You didn't know from him that he was there?

A. I didn't know until now that he was there; nothing called it to my attention.

Q. On Monday you went to Sachs' office?

A. Yes sir.

Q. And you asked Mr. Kelso the question, you asked first Mr. Sachs the question as to whether your brother had advised or done anything to pursue this receivership further in the State Court? That is practically what you ask is it?

A. That is practically the effect of it.

Q. Did you ask that same question of Mr. Kelso concerning Mr. Sachs?

A. No sir.

Q. Why didn't you?

A. Why I was only with my brother.

Q. Why did you suggest at that conference that your brother withdraw from it and leave Sachs in the conference?

A. Why Mr. Sachs had his several brothers there and I was only with W. W.

Q. You were appearing there with W. W.?

A. I was appearing there as his brother.

Q. But you tried to withdraw from the conference; that is, you suggested it?

A. I thought it was wise, and still think so.

Q. And the only reason you staid there was that one of the Sachs said that they were only discussing this matter?

A. Yes, he was the oldest man in the party.

Q. And you thought it was wise to withdraw later on in the evening?

A. Yes sir.

Q. Did you ask Judge Utz why he was over there?

A. No, I did not.

Q. Did you think it a little strange that the Judge of the Circuit Court should be over in the office holding a consultation with these other attorneys?

A. Well I don't know that that occurred to me.

Q. Did Utz say why he was there?

A. Not to me.

Q. Didn't hear him say why?

A. No sir.

Q. Who was it, if any one, said in that conversation that he would rather go to Jamaica than come to Indianapolis?

A. I never heard that expression.

Q. By anybody?

A. Not until I got up here.

Q. I will ask you if David Sachs didn't say that he would rather go to Jamaica than to go to Indianapolis because he would have to testify against your brother?

A. He did not in my presence.

Q. You asked Judge Utz then and Judge Utz told you he would give you an affidavit too?

A. Yes sir.

Q. Did you ever ask Judge Utz for that affidavit?

A. I did not, sir.

Q. Why?

A. Because I expected to come up here with W. W. and I thought both Judge Utz and Mr. Kelso would be here.

Q. Did you have Judge Utz subpoenaed as a witness in this case on this contempt proceeding?

A. No sir.

Q. If you knew that is what he said why didn't you subpoena him?

A. I didn't issue any subpoenas in the case.

Q. Why didn't you have him subpoenaed for you?

A. Because I am not an attorney in the case.

Q. All the reason you didn't get Kelso's affidavit was because you didn't think Kelso was there?

A. No.

Q. That is what you said.

A. I will explain that.

Q. Is it the reason you didn't get Kelso's affidavit was because he left for Indianapolis?

A. Yes; and I thought Judge Utz would be here too.

Q. You knew for the last week that Judge Utz has not been at Indianapolis, didn't you?

A. This last week?

Q. Yes.

A. I don't know where he has been the last two weeks. I know I was up here sometime ago and he was here. I will explain in addition the reason I didn't ask Mr. Utz and Mr. Kelso was because I read their testimony.

Q. Where?

A. Taken here on Mr. Kelso's trial.

Q. Where did you read it? When did you read it?

A. Part of it here and part of it on the train.

Q. From the newspapers?

A. No sir; from the stenographic report.

Q. You had a stenographic copy made of this testimony before this case came up?

A. I got a copy; yes sir.

Q. Did you learn at any time prior to the Monday that you met in Sachs' office that Mr. Sachs was acting as attorney for Mr. Kelso?

A. I didn't even know it then, and I hadn't learned it prior to that time and I never did learn that until these proceedings were on.

Q. And I understand you didn't then know that your brother was acting as attorney for the Receiver?

A. No, I don't say that.

Q. Oh, you did know that?

A. I didn't know he was acting as attorney for the Receiver but understood he was.

Q. When did you learn that?

A. I don't know that; I think the same day that the suit was brought down in New Albany.

Re-examination.

Questions by Mr. Flexner.

Q. You have said upon cross-examination that you didn't see your brother while he was sick, or when he was sick. What sickness do you refer to?

A. He was sick twice. On one afternoon, Mr. Fairleigh, he was sick, and on the same night—that was Monday night —of our conference with Mr. Kelso and Judge Utz and the Sachs he was sick then and sick for sometime afterwards.

Q. In this latter sickness did you see him at all?

A. Yes sir?

Q. So that your answer refers to the afternoon of the week before?

A. Only to that one afternoon.

Q. You say that you do not see your brother sometimes for days at a time; that it was not unusual for you not to see your brother for a day or two?

A. No sir, that was not unusual.

Q. Why was it not unusual?

A. Because, Sir, our practice is almost entirely separate and distinct, both of us being very busy, and we have made it a rule not to interfere with each other's business in the office.

By Mr. Kealing:

Q. But if you have a case that is very important, involving possibly a citation before a Court for contempt on the part of your brother, isn't that important enough to have a consultation on in your firm?

A. This is the only case of that sort that has ever occurred in the office.

Q. Sir? I didn't understand your answer.

A. Read him my answer.

Q. Read him the answer.

The answer to the preceding question was read by the reporter.

Q. But where there is trouble as it now turns out, that you now know, respecting the clash of jurisdiction between the two courts—

Mr. Fairleigh: I submit that is argument your Honor.

Mr. Kealing: I haven't finished my question.

Q. (Continuing) As there was in the M. Zier case during the days from February 17th to February 22nd, is it not customary on matters of such importance to have consultations?

A. Looking back upon it now I think it is, but it evidently was not in this case; and we have had other cases of a similar nature, the one that the Judge referred to, the Etheridge case, I didn't know anything about.

Q. How long ago was that?

A. I don't know.

Q. You said you knew nothing about it. How long ago was it? Perhaps you were not in the firm then?

A. Oh yes.

Q. How long ago was it?

A. Was what?

Q. This Etheridge case?

A. I don't know, sir. The Judge referred to it here from the stand.

Q. Do you remember anything about the case?

A. Not a thing.

Q. Didn't you say you was in the firm when that case was in the firm?

A. I thought the case read my name—

Q. I am asking you, Sir, if your recollection is you were in the firm when that case was there?

A. I imagine I was.

Q. Do you recollect anything of it?

A. No sir.

By Mr. Smith:

Q. Mr. Watts in the conference at Mr. Sachs' office on Monday, did Judge Utz—Monday afternoon I refer to—did Judge Utz say anything with reference to if Mr. Sachs and Mr. Watts wouldn't go to Indianapolis that Mr. Hester could fix it up or if he couldn't see Hester he could get Stotsenberg to see Hester and it could be arranged without any further proceedings in the United States Court at Indianapolis?

A. Yes sir; there was a conversation of that sort. A number of suggestions were made for the purpose of getting a settlement of some sort and somebody suggested to Judge Utz that he see Hester. Judge Utz says, "No, I will have Stotsenberg see Mr. Hester and I think through him we can get some sort of a settlement.

By Mr. Kealing:

Q. You spoke a moment ago of talk of hiring, Kelso hiring an attorney at Indianapolis. Did you hear Mr. Sachs say to Mr. Kelso that if he was in his place he wouldn't emply Mr. Newberger because he wasn't the right kind of a man to present such a case?

A. I never heard Mr. Newberger's name mentioned in the conference.

Witness excused.

Maurice A. Sachs, a witness called on behalf of the defendants being first duly sworn testified as follows:

Direct examination. Questions by Mr. Smith.

Q. Give your name, Mr. Sachs.

A. Maurice A. Sachs.

Q. Are you the Maurice A. Sachs of M. A., D. A. & J. D. Sachs attorneys practicing law in Louisville?

A. Yes sir.

Q. You are the older brother of these two gentlemen?

A. Yes sir.

Q. What is your age, Mr. Sachs?

A. Fifty-six next month.

Q. How long have you been practicing law?

A. My law school diploma which was my license is dated 1866.

Q. You graduated in Louisville then?

A. Yes sir.

Q Been practicing law there ever since?

A. Ever since.

Q. Mr. Sachs were you present in your office on Monday the 23rd of February in the forenoon when Mr. Kelso came over there to see your brother D. A. Sachs?

A. Yes sir.

Q. Did you hear any conversation between them on that occasion? I speak of a morning hour now.

A. I came into the back room of our offices and when I came in I found my brother was there and I think that Mr. Watts was there, Mr. W. W. Watts and his brother, and I was introduced to Mr. Kelso; I had never met him before; and I took a seat there at the table just to listen, or to see or to hear what was going on, and I had not been invited in there at all.

Q. Up to that time had you had any connection with these proceedings in the Zier cases, either the bankrupt or the state proceeding?

A. Personally none.

Q. Had you known anything of the proceedings at all?

A. Yes sir.

Q. What was the extent of your knowledge on that Monday?

A. A brewery firm at Louisville, Walters, had a contract with the Zier concern before this failure, before the Court proceedings at New Albany. The Walters at Louisville applied to my youngest brother—there are three of us—to look into that matter; a contract for boilers that the Zier Company were building for them was unfinished, and I knew that that matter was in the office. Personally I had no connection with it. I only knew that from the fact that my youngest brotder often talks to me about matters in his hands.

Q. Up to that time had you any knowledge of the conflict of jurisdiction that had arisen between the two courts, the Federal and the State Court?

A. No sir.

Q. Had you been called into consultation in regard to any such conflict at all up to then?

A. Never and I was never called into any consultation about it. I happened to come it.

Q. Had you been consulting in regard to any complications that Mr. W. W. Watts had supposed he was about to get into or was in?

A. No sir.

Q. Now at the time you went into the back office there did you hear any conversation as between Mr. Kelso and your brother D. A. Sachs? Perhaps you had better go on and state in your own way what occurred there that morning, Mr. Sachs, if you will remember.

A. I will try to tell you but I must say this, that I done more thinking, and wasn't listening part of the time as to what they were talking about. I will do the best I can. My recollection is I came in and I saw some gentlemen there, that is those I have named, and I took a seat at the table, and my brother had a paper, had an order made by this court at some date prior to that, and handed it to me, and I read it, and I then asked the gentlemen to tell me something about this matter. I may say that it was all practically new to me up to that time; and my brother told me; I can't tell you just—I am only telling you that between them they gave me a sort of a general idea about this Zier concern having become insolvent and I had to take up the time simply to give me a general idea of what has been developed here at this trial.

Q. An outline of the record?

A. An outline.

Q. Well?

A. Well, when they got through with all that I will admit I did not appreciate the seriousness of the thing; I turned around and I said: "Will, always deal fairly with courts; if you will go up to Indianapolis and see the judge of that court and will tell him what you tried to make clear here to me, turn this property over to him, to his court, why I think although you may be technically guilty of some offense, the Judge if he wants to do right will take cognizance of that;" and I talked to him as I was so much older than he; I considered myself a pretty old man; and I talked to them in that way; and that was practically all I had to do with it.

Q. Did you hear your brother, D. A. Sachs make any statement at that time in regard to what he thought ought to be done or what was the result or effect of that order?

A. Oh yes sir; I will say that he did say when I said "Why this order ended things; this is plain," why he said, "Well there, that is what I told you." Turning to Kelso or

some one sitting there, I thought it was Mr. Kelso. There was another matter developed in that meeting that I just happened to think about.

Q. Was there anything said there that morning in regard to anybody having become responsible for the costs of the Receivership accepted by Mr. Kelso?

A. There was something said about Mr. Watts ought to do that, or ought to furnish some money to help Mr. Kelso.

Q. Who said that?

A. Mr. Kelso is my recollection.

Q. Was there anything said about D. A. Sachs at any time that day?

A. Nothing of that sort said and no inference of that kind.

Q. Were you in there in the afternoon when Judge Utz arrived?

A. I generally get back at half past three and I came in shortly after I came back to the office.

Q. Who was there when you got back there in the afternoon?

A. These same parties that were in there in the morning it seems to me, except that Judge Utz had arrived in the meantime. My best recollection is now that it was developed there in the morning that Judge Utz desired to be present and that in the afternoon when I came back from lunch—I generally get in about half past two—and I walked back and found he was there; I was there introduced to him, I remember that; I never had seen the judge before.

Q. Now did you hear any conversation that afternoon between Judge Utz and Mr. D. A. Sachs and Mr. Watts, W. W. Watts, as to whether or not he desired them to attend, or whether they intended to come to this Court at Indianapolis in reponse to these citations?

A. Yes I did hear a discussion of that question.

Q. What was that?

A. Well now, when I say I heard it I didn't pay close enough attention to that to be able to tell you just what was said. Let me think a minute. Well, I don't want to guess about it. I wouldn't like to make a statement unless I remember it.

Q. Did you hear your brother say anything to the effect that he would rather go to Jamaica, Texas or California, then to give evidence against his friend Watts?

A. I am very positive that no such statement as that was made.

Q. Did you hear any conversation on the part of Judge Utz and these gentlemen in which some suggestion was made that Mr. Hester be seen, and Judge Utz suggested

that he would see Mr. Stotsenberg to avoid the necessity of their appearing here.

A. In the afternoon. In the afternoon, towards the close of that afternoon interview, Judge Utz was sitting at the table and Mr. Kelso was walking up and down the other side, as if it were there (indicating a position in the Court room) a question came up about money matters. Mr. Watts had been called in and when it was put to him that he was to raise money or ought to do it, he looked surprised; and there was some running conversation about it; Judge Utz was sitting at the table; "Oh, well, he says, it is not going to require so much money." Mr. Kelso thought it was going to be very expensive and the Judge said that he had some money in Court. I am not going to give you the figures because I can't; I wasn't noticing the figures; he had some money in Court in this matter that could be appropriated to that purpose, and then in that connection it was mentioned that they were to see Mr. Hester, I believe, who was supposed to be the opposing counsel, and that they would talk this matter over and see what could be done towards settling it, or something of that kind; I can't tell you definitely.

Q. You can't remember that conversation definitely enough to give it?

A. No.

Q. Or undertake to give it?

A. I will say that that was late in the evening, and then Mr. Kelso said he would go to the telephone, long distance telephone, and telephone up here to Indianapolis to—I think he mentioned the name that I heard mentioned here, a gentleman don't know, Mr. Ferd Winter, and he came back shortly afterwards and said either that he couldn't get him or that he couldn't secure his services, and that finally ended it. He then went off.

Q. That is all you know about this conference is it, Mr. Maurice.

A. Yes sir.

By Mr. Fairleigh:- I wish you would say to this Court whether during these conferences on the 23rd of February you heard Mr. John R. Watts ask Mr. D. A. Watts, Mr. Kelso or Judge Utz, with reference to his brother's connection, as to whether he did anything or advised anything in opposition to the turning over of this property?

A. Yes sir.

Q. What responses did those gentlemen make to that inquiry?

A. I couldn't tell you what the answers were but I did hear Johnny Watts speak about getting affidavits to show that his brother had taken no—or done nothing towards interfering with the orders of this Court.

Cross-examination by Mr. LaFollette:

Q. Mr. Sachs are your offices in Louisville adjacent rooms, you and your brother's?

A. They are peculiarly divided, Mr. LaFollette; there are four rooms that were originally intended for two offices; there is quite an intervening space between the front and back part of the house. It is a long business.

Q. During the week preceding the Monday at which you heard the conference you have related, or at which you were present did you hear anything about the M. Zier & Company concern and its history in the Court at Indianapolis and at New Albany?

A. Nothing of sufficient importance to make me now recollect it at all, only about this Walters controversy; nothing connected with this matter; nothing.

Q. Did you know that W. W. Watts had had occasion to call your brother to go with him over to the Floyd Circuit Court?

A. Oh yes. Yes; now wait a minute. Let us see. What was the date of the proceedings here?

Q. On Monday and Tuesday the 16th and 17th of February here.

A. The 16th and 17th of February. It was upon the 17th of February that this Court made an order, the order that was finally sent down, the one that I looked at Monday? That was the 17th wasn't it? And this Monday following was the—

Mr. Fairleigh: 23rd.

A. (Continuing) 23rd. Yes I did know that Mr. Watts had called on my brother to help him out of his trouble some.

Q. Did you know that he came to New Albany on Wednesday afternoon or morning, anyhow Wednesday sometime?

A. Who?

Q. Mr. Sachs, your brother, in company with Mr. Watts.

A. I didn't know anything about it.

Q. You didn't know that?

A. No sir.

Q. Did you know he was also at New Albany on Thursday the day following?

A. No sir I did not.

Q. And Friday and Saturday?

A. No sir I did not. That is, I didn't know anything about it prior to Monday.

Q. Prior to Monday. During the week was there no question came up in your office about the law governing the matter of rights of courts as to jurisdiction?

A. No sir, no.

Q. Was that question discussed in your office?

A. Well I won't say that either, but not with me to such an extent as would have made any impression on my mind.

Q. There was no such examination of authorities or discussion of the law in your offices during that week that brought to your knowledge the fact that there was a conflict of jurisdiction between the Floyd Circuit and the United States District Courts?

A. I remember only one instance; that sometime during that week my brother Dave spoke to me about the question of jurisdiction I believe between the—jurisdiction as between the United States Courts in bankruptcy and the State Courts where there was a proceeding pending in the State Court; well, hypothetically this case you may say, and I remember this: that I picked up Loveland, the Clerk of the United State Court at Cincinnati's book on that subject, Loveland's Bankruptcy, and we had been along that line in a case that we had that came up early under the act of 1898, when the whole thing was new, we were always mystified about it, and I remember now I handed him that book, and I called his attention to a foot-note where there are cases cited a list that deep (indicating) on either side of the question.

Q. Didn't you learn then that the reason why he was examining those authorities and talking about the law to you was because there was a conflict between the Floyd Circuit and the United States District Court?

A. Well I couldn't say that; I told you it was put to me as a sort of a hypothetical proposition, and I didn't know what it had application to.

Q. Didn't you by reason of that talk about the law learn that W. W. Watts had been at Indianapolis in an effort to convince the Court here that the Floyd Circuit Court had jurisdiction in the M. Zier case and the order which had been made appointing Mr. Connor a Receiver should not be enforced?

A. Why no, I can't say that I knew anything about it or heard enough to make me pay any attention to it. I don't like to—

Q. (Interrupting). I am asking what you know about it?

A. I will tell you. I will tell you all I know about it.

Q. Now from each day, Wednesday, Thursday, Friday and Saturday, didn't you on any of those days learn that that question was on there at New Albany and that that was why your brother was going over there every day?

A. I didn't know he was going over every day.

Q. Didn't you?

A. No I did not. One day, one day it seems to me that I knew that he was going to New Albany; I don't like to be making long winded explanations but I can't help myself.

By the Court:

Q. I don't know why you can't, Mr. Sachs. Why can't you answer the questions without explanations?

A. I will try my best. I was going to suggest to your Honor the reason why I knew so little about it is that our business is divided up.

By Mr. LaFollette:

Q. Well if you didn't know it that ends it; I am asking if you didn't learn it in the course of the week and if you didn't you didn't. Now on Monday you did hear more definitely about the matter, didn't you?

A. Oh, yes.

Q. You say you were not called into the conference? You walked into it?

A. That is my best recollection of it.

Q. But when you walked into this room in which these gentlemen were engaged in conversation you stopped there, did you?

A. Why certainly I took a seat at the table. I remember that.

Q. And after you did take a seat at the table what did you learn about the questions that were being discussed? How soon did you learn about it and what did you learn?

A. Well I asked for information as to the matter to get the facts as best I could.

Q. What information did you get?

A. I wanted to know what they were talking about?

Q. What did you learn?

A. Practically what has been told here in various shapes.

Q. Did you learn there that Mr. Watts had come to Indianapolis in connection with Henry Jewett on Monday the 16th of February to argue the proposition of the jurisdiction of the courts and endeavor to convice this court that the order that had been made directing the property of M. Zier & Company to be placed in the hands of a receiver in bankruptcy should not be enforced because the Floyd Circuit Court had had jurisdiction of it prior to such order?

A. (To the reporter: Will you read that question?)

The question was read.

A. No I didn't learn what you stated there in that question.

Q. Well did you learn that Mr. Watts had been at Indianapolis at all.

A. Yes sir.

Q. Did you learn that immediately following that he and Henry Jewett had gone to the Floyd Circuit Court saying that they intended to turn over the property of M. Zier & Company to Mr. Connor, Receiver in bankruptcy?

A. I heard that Mr. Watts and Mr. Jewett had gone to the Floyd Circuit Court but exactly for what I can't say.

Q. Did you hear that there was some claim that they had by some action placed themselves in contempt of the Floyd Circuit Court?

A. I think Mr. LaFollette in explanation of that order of this Court—

Mr. LaFollette: You can answer the question. Read the question to him.

The question was read.

A. Oh yes sir.

Q. And did you also learn that they had been cited for contempt in this Court?

A. Yes sir.

Q. Was the matter explained to you so that you gentlemen —were they in a discussion of the law bearing upon the case at that time?

A. I can't tell you that; I don't remember that.

Q. Is it a fact that during that Monday a considerable part of the conversation that was had in your office was a discussion of the law bearing upon the question of jurisdiction?

A. I should say No.

Q. How long did the conference of the morning last?

A. I came in there about half past ten o'clock; I think I was in there an hour or so.

Q. Well, were you in there as long as the meeting was in progress as a conference?

A. I wouldn't like to say sure because I don't remember that; I may have gone out before some of them left.

Q. Was there another meeting held in the afternoon of the same parties substantially?

A. With the addition of Judge Utz.

Q. Were you present when Judge Utz came in?

A. I can't say.

Q. But you do remember that you were a meeting at which Judge Utz was also present?

A. Sure, sure.

Q. You remember that Mr. Kelso was present?

A. Certainly.

Q. Had you learned in the meantime that Mr. Kelso had been appointed Receiver in the State Court and had taken charge of the M. Zier and Company property by means of a writ issued to the sheriff of Floyd County?

A. Yes sir, there was—certainly I must have been told about that.

Q. Did you know prior to the action of the sheriff in taking the property that your brother D. A. Sachs had appeared in the Floyd Circuit Court or at least before the Judge of the Floyd Circuit Court, and either before the Judge or at Mr. Kelso's office made an affidavit in which he appeared as the attorney for the United States Tube Company and had it filed before the Judge?

A. I did not.

Q. Had your brother told you nothing about that?

A. No sir.

Q. During the week?

A. No sir.

Q. And didn't he on that Monday tell you that he had taken that action?

A. No sir.

Q. Didn't he tell you that he had that far connected himself with the proceeding.

A. Not that I can remember, Sir.

Q. Was there anything said after Judge Utz came when Mr. Kelso was present about your brother D. A. Sachs being the attorney for Mr. Kelso as Receiver?

A. I knew that he had not been from the conversation that took place there.

Q. How is that?

A. I knew that he had not been from the conversation that took place there.

Q. What was it that took place that gave you such knowledge as that?

A. There was no demand made upon him that indicated that; no intimation of that sort; I know it more from the absence of anything than from what was actually said.

Q. You think you know it from what was not said?

A. Precisely; from the attitude of the parties; from the way they were talking.

Q. Well, didn't you know that your brother D. A. Sachs had taken the position there before the Floyd Circuit Court that that Court, the State Court, had jurisdiction as against the Bankruptcy Court of the M. Zier property?

A. You mean when?

Q. The week prior to the meeting on Monday.

A. Oh no.

Q. You didn't know that?

A. I knew nothing at all about it; at least if I did I have forgotton.

Q. Was there anything said in the course of that meeting on Monday either by Mr. Kelso or Judge Utz to Mr. Watts

or Mr. Sachs, D. A. Sachs, about the proceedings that had taken place the week before and about his advice in the matter?

A. Yes sir, there was some talk about that and he corrected that two or three times saying, "I never undertook to advise anybody."

Q. Your brother said that?

A. Yes sir.

Q. Well what was there that had been said that induced your brother to say that he had not made any effort to advise them?

A. They were speaking about some of these late proceedings.

The Court: I can't hear you.

Preceding question and answer read by the reporter.

Q. Hadn't they said to him that they had acted under his advice as the reason why he was then undertaking to say that he hadn't advised them at all?

A. No.

Q. Well you do say that you heard him say that he didn't advise them, didn't you?

A. There was some questions came up there possibly, I can't tell you exactly the connection; I was interested in asking that question myself, and I heard him make the correction; I can't explain it exactly; I will try to do it if I can.

By the Court:

Q. What was it you heard him say?

A. I heard him say that he hadn't been advising with these people in answer to my question; I asked the question, I being the older. Now that is my recollection. My recollection is very fair about it. I asked him if he had been advising with these people and his answer was no; I was asking questions, and expressed opinions once in a while or something of that sort.

By Mr. La Follette:

Q. That is the way he answered you?

A. Yes sir.

Q. After he had been asked questions?

A. He had given opinions about matters.

Q. Did he explain to you what his opinions were as given over there, when he was giving opinions?

A. I wouldn't undertake to say that for I can't remember it.

Q. Were you endeavoring to learn from your brother D. A. Sachs what position he had assumed over there in the State Court?

A. No sir.

Q. Well then why were you asking about what attitude he had assumed in it?

A. Just to get general information.

Q. Was the question of what kind of a response or responses were to be made in this court under consideration?

A. They were considering that; they were talking generally about that.

Q. That was what was before the meeting wasn't it?

A. And I right from the start I said just what I said when I started out here to-day; I said "Gentlemen, go and make your explanation; you don't need any responses, go and see the Court."

The Court: You were not asked for that. Confine yourself to the question.

Q. Had you learned then that your brother and W. W. Watts were each included in an order to show cause in this court why they should not be punished for contempt?

A. On that Monday?

Q. Yes. Did you learn that?

A. I don't know; I expect I did.

By the Court:

Q. You don't know really what advice you gave more than you have stated?

A. As you have asked me, I can only wind up as I began; I considered myself an older man than all of them. I didn't consider anything serious in it. I said, "Go and tell the Judge of the Court candidly what has been done; turn over the property and do right and the Judge will do right."

By Mr. Kealing:

Q. You don't know why they didn't take your advice?

A. I cannot tell you.

Q. You know that they didn't take your advice?

A. This was after all the trouble had been done, if I am right.

Q. Except the coming back here and answering the citation?

A. Yes sir.

By the Court:

Q. That was the time you gave the advice? You told them to come up here and turn over the property and do what was right? You know now that they didn't do it?

A. Yes sir.

Witness excused.

Jos. G. Sachs, called for the defendants, being duly sworn and examined by Mr. Smith, testified as follows:

Q. Are you a member of the firm of M. A., D. A. and J. G. Sachs?

A. Yes, sir.

Q. Practicing law in Louisville?

A. Yes, sir.

Q. How long have you been engaged in the practice?

A. Since 1882.

Q. What aged man are you?

A. Forty-one last October.

Q. Were you over at New Albany upon Friday, February 20th in the afternoon?

A. I was over there on Friday afternoon in February but I do not like to be positive about the 20th. If you say it was the 20th I will believe it.

Q. I call your attention to the fact that it was the Friday when your brother D. A. Sachs and Mr. Watts and Judge Utz and Mr. Kelso were in Judge Utz private chambers there?

A. I was over there the Friday that they were there.

Q. What time in the afternoon did you get there?

A. I could not tell you but between three and half-past three.

Q. What was your business over there that day?

A. I went over to see about what could be done about getting a boiler contract finished for the Walters, which the Receiver had undertaken to carry out by the order of Judge Utz.

Q. Had you been over there before in regard to that same matter?

A. I was there at the meeting of the creditors in Judge Utz Court.

Q. You were there as the representative of this brewery concern in your city?

A. Well, yes and Mr. Hester was assisting me.

Q. On this Friday when you went over there did you know that your brother and Mr. Watts were already over there?

A. No, sir; I did not.

Q. Had you been at your office for a week?

A. I cannot say I had been away for a week. I think I took sick on Monday or Tuesday of that week and did not get down to the office until after that Friday. That Friday afternoon I went directly to New Albany from my house.

Q. What was it that occasioned you to go over there at that special time?

A. Word was delivered to me, I cannot say how it came positively, whether by phone or not, but I got word that the Walters people were very restless that their contract was not being carried out and that the boilers had not been delivered and they were being delayed and they begged me to go over.

Q. Name the parties that were present in there when you went in there?

A. Judge Utz, Mr. Kelso, D. A. Sachs and I can not say whether the clerk was in there all the time or not but there was some gentleman whom I presume was the Clerk who was in and out of there.

Q. Was W. W. Watts there?

A. Not when I got there. I do not remember who opened the door when I got there but my brother came up to me and spoke to me about my being out and while we were there talking Judge Utz and Mr. Kelso were talking together and the whole thing was interrupted when Harry or Henry—I don't know what his name is—came in and Mr. Watts.

Q. What took place?

A. Mr. Jewett offerred some kind of a paper or had it there at any rate and Judge Utz was dissatisfied with it. It was a lot of figures when it should have been an itemized statement of some sort and he went on to make some excuses why it was not what the Judge wanted, that he had left the work to be done by some clerk or agent or bookkeeper of the trust company and the clerk had not itemized it and he was begging further time in which to do it and the judge was insisting that the thing should be filed and ought to be done and to the best of my recollection said he would have to get it in that afternoon. There were some other matters discussed but I can not recollect what they were but at any rate in continued for some little while and I waited until I could get an opportunity to speak to Judge Utz about the Walters matter on which I had come and I was feeling badly and asked them all if they would not go out and take a drink in plain English and Judge Utz said he would go and Mr. Watts went along. Mr. Kelso declined and Brother D. A. said he was not feeling right and he did not care to go. Previous to going out I also heard Judge Utz tell Mr. Kelso to prepare an order removing the Receiver and appointing a new Receiver, Mr. Kelso, and then there was some discussion about the bond. Judge Utz was insisting on a large bond and Mr. Kelso seemed to think that a bond of three or four thousand dollars would be ample and went on to say that he did not have money or something to pay for an expensive bond and Judge Utz said "It does not come out of you personally, it will be charged as an item of expense against the estate" and then after that he told Mr. Kelso to go ahead and get up that order and that was the first opportunity I had to talk upon the subject I had come on and then not feeling well myself I invited them all out and Judge Utz accepted and Mr. Kelso said he had to draw his orders and D. A. declined.

Q. Who went out at the time that you did, if you remember?

A. To the best of my remembrance we all got up at the same time and I walked on out with Judge Utz and I am not sure whether Mr. Kelso went with us or not. I will say this to you—I heard Mr. Watts make the statement about Mr. Kelso having gone along but I won't be positive about that. I can not say, I don't know.

Q. Did Mr. Kelso come out of the door with you or not?

A. I can only say that my recollection is that he did.

Q. Did D. A. come out with you?

A. No, sir—I never saw D. A. after I went out of the room that afternoon.

Q. Where did you go?

A. We went to a cafe. I do not know the names of the streets in New Albany but it is about a block up on the same street with Hoerter & Hester's office.

By Mr. Hester: Pearl Street.

Q. How long did you three remain there?

A. Judge Utz left Mr. Watts and me seated there—I think it was after five o'clock. I do not know why he went or where he went to. My recollection is that he was disturbed two or three times while he was seated there with us.

Q. By the Court. The question is how long did you stay there?

A. Judge Utz left us shortly after five o'clock and after Judge Utz left Col. Jewett came in and sat down for a few minutes and then he and Mr. Watts and I went out front and while standing in front Mr. Jewett said something about having to leave, that he was going to have people at dinner that night or he was going to some house for dinner and we started up the street and met Mr. Zier and he walked as far as the corner and then I went up to the court house where I had last seen Brother D. A. and I did not find him and I looked at my watch coming down the steps and saw that it was close on to six o'clock and I saw a car standing at the corner and I ran past Mr. Watts and Mr. Zier who were standing there and called to Mr. Watts to tell D. A. that I could not wait for him any longer that it was six o'clock and I could not find him and I had gone.

Q. That was about six o'clock and you left?

A. Yes, sir.

Q. It took you about forty-five minutes to get home?

A. Yes, sir.

Q. Did you call your brother up after you got home?

A. Yes, sir. After I had eaten supper I called him up.

Q. About what time?

A. I can only figure it. To the best of my recollection the way I figure it it was somewhere between seven and half past seven.

Q. Did you find him at home?

A. Yes, sir.

Q. Did you know anything of the nature of the proceedings over there except that there was a Receivership suit pending in the Floyd Circuit Court in which you had a claim filed or represented an interest?

By the Court: Is there any charge that he had anything to do with this matter.

Mr. Smith. Nothing at all.

The Court. Then I don't see the materiality of it.

Q. Very well. Were you present at the interview in your office on Monday?

A. I was present for a short while in the afternoon.

Q. Now, tell what took place in your own way while you were there?

A. After I came back from dinner sometime in the afternoon, I won't be positive the time but I know it was after half past two I had occasion to go back to the room where my desk is and the letter press—on two or three occasions and while in there to copy a letter or after a paper I heard Mr. Kelso make a remark. I should say at that time there was in the room Judge Utz, Mr. Kelso and D. A. There was some talk about going to Indianapolis and then further along I heard Mr. Kelso say he thought Mr. Watts should raise the money to bear the expenses, possibly not those words but the substance. I had been standing close to the folding doors connecting the two rooms and Mr. Kelso turned to me and asked me what I thought about it. I said "I don't know anything about it Mr. Kelso but I would suggest that you ask Mr. Watts over here." I turned to D. A. and said "I think you ought to go and telephone to Mr. Watts." He left the room and then returned and said that he had. I am not positive whether I remained there then. I don't think I did but at any rate when I was back in there later J. R. Watts, John, we call him and W. W. came in and that same question arose again. I am not certain who put the question to Mr. Watts but I think it was D. A. said to W. W. Watts "Mr. Kelso thinks you ought to raise the money to stand this expense or to stand all the expense" and Mr. Watts seemed surprised and said "Me?" "I don't see why I should do it." Then it was explained to him that it was not intended that he personally should do it but that his client and he said: "I have no way of doing that. I don't see how I could ask it." Judge Utz said "Mr. Kelso I don't think the matter of expense is going to be as much as you think." Mr. Kelso seemed to think that it would amount to two or three or four thousand dollars according to my recollection. Judge Utz did not seem to think so and he said "I have some money in my

court—I don't remember how that conversation ended—I would not be positive.

Q. Did you hear anything about whether or not he and your brother D. A. Sachs were or were not to come to Indianapolis?

A. Yes, sir—I hear this the question was discussed about their coming and W. W. Watts addressed himself to Judge Utz principally and said as I understood it "Up to now I had fully determined to go to Indianapolis but since you feel that I ought not to go, I don't know exactly what to do" and to the best of my recollection but Utz and Kelso said they preferred that D. A. and W. W. Watts should not come. Then John Watts the younger brother said "Gentlemen, I don't know. It throws a look about W. W. that I don't like. It seems to me that he ought to go but you are all much older than I am" or substantially that. I don't think that matter was determined while I was there.

Q. Did you hear any statement on the part of your brother D. A. to the effect that he would not go because he would have to testify against his friend Watts and before he would do that he would go to Jamaica or Texas or California or some other parts?

A. He made no such statement in my presence or hearing.

Q. Did you hear any statement by Judge Utz in substance to the effect that he could not see Mr. Hester but that he would have Mr. Stotzenberg see him.

A. I only have an indistinct recollection of it. I would not like to make any positive statement as to what the conversation was.

Cross-examined by Mr. Kealing.

Q. Did there seem to be any discussion on the part of Mr. Sachs and Mr. Watts as to whether they should come to Indianapolis to answer the citation of the Federal Court?

A. From the remark I heard, there evidently must have been some talk about it.

Q. Did they hesitate to come?

A. They were at that time.

Q. Why were they hesitating?

A. I could not tell you.

Q. Did they give any reasons why?

A. The only thing I know was from what I gathered there that Judge Utz did not want them to come.

Q. I asked about them. They knew and you knew that they had been cited?

A. I think I did.

Q. What if anything did they give as reasons why they should not come?

A. I did not hear.

Q. Then the whole sum and substance of the conversation was that the two men that had been cited were trying to convince the Judge and Kelso that they ought to come and the Judge and Kelso were trying to convince them that they ought not?

A. My own idea of it was this way—

Q. Can't you answer?

A. I cannot say that they were trying to convince the Judge and Kelso that they ought or that the Judge and Kelso were trying to convince them that they ought not.

Q. Did you not say that Kelso advised them not to come?

A. He said he would prefer that they would not.

Q. Did you not say the Judge was trying to convince them that they ought not to come?

A. The Judge said he would prefer they would not come.

Q. You are a lawyer?

A. Yes, sir.

Q. I understood you to say that Judge Utz said that he had some money in this proceeding of the M. Zier & Co. receivership?

A. Yes, sir.

Q. Out of which he might pay the costs and expenses of these people to Indianapolis in these contempt cases?

A. Yes, sir.

Q. Did that strike you as a lawyer with being a peculiar proposition?

A. The whole thing struck me as being peculiar.

Q. You as a lawyer knew he had no right to do that?

A. That he had no right to use the money for that purpose? No, sir—I did not.

Q. Kelso did say to these people that they had promised to pay the costs and expenses?

A. No, sir: he did not.

Q. How did the question come up about the costs?

A. I can only tell you as I have said that I just heard the the latter part in which he said he thought Mr Watts ought to raise the money to pay the expenses.

Q. What time on Friday did you go to New Albany?

A. I think I reached there shortly after three o'clock.

Q. You proceeded directly to the court room?

A. I did.

Q. Had you before that day met Judge Utz personally?

A. Yes sir.

Q. Did you know him?

A. Yes sir.

Q. Did you know Mr. Kelso before that?

A. I met Judge Utz and Mr. Kelso at that creditors meeting. That was the first time I met them.

Q. You went to the court house for the purpose of transacting your boiler business?

A. Yes sir.

Q. When you went to the court room you found they were engaged on some other matter?

A. They were in chambers on some other matter.

Q. You went to the Judge's room?

A. Yes sir, and knocked at the door.

Q. How long did you wait until you presented your matter? Or did you present your matter?

A. I did not have an opportunity. Mr. Jewett and Mr. Watts came in.

Q. Did you present your matter that afternoon at all?

A. Yes sir.

Q. At what time?

A. On the way out the street to this cafe.

Q. Not before?

A. No sir, I had no opportunity.

Q. You had the opportunity to invite the Judge to take a drink?

A. Yes sir.

Q. Why didn't you tell him in the court house that you would like to present your matter and wait until you could do it?

A. My recollection is I did tell Judge Utz what I came for.

Q. When?

A. The first opportunity I had to ask him if he would not go along to the cafe?

Q. To present the matter?

A. Not for that purpose alone but to give me an opportunity.

Q. To present the matter?

Was that what you invited him to take a drink for?

A. No sir I invited to take a drink.

Q. I will ask you when you first told him this business that you came on. Was it in the court house or not?

A. I think it was up in the chambers.

Q. What did you say and what did he say to you?

A. I told him I had come over to see about the Walters contract and my recollection is he said something to me that it would be all right or it would be carried out and that is the best of my recollection.

Q. That was in the court house?

A. Yes sir.

Q. Why did not you go home?

A. Because I wanted to talk with Judge Utz further. The matter was not settled with me. It was very indefinite. I had been sent to find out about it.

Q. Did you talk further with him?

A. Yes sir.

Q. Where?

A. On the way out or at the bar room or cafe.

Q. Which was it a bar room or a cafe?

A. Either way you call it.

Q. You know a bar room from a cafe?

A. This was a cafe adjoining a saloon where tables were set.

Q. I don't know, I ask you if you know. What did you say to him at that cafe or bar room what ever it was?

A. I did not get any more definite answer.

Q. What did you say to him?

A. Now if your Honor please I ask the court for protection. I want to answer him, but he asks in such a manner—

The Court: If you want to answer, answer.

The question was read to the witness.

A. I told him the Walters were very much put out and distressed about the matter so much so that they had got me out from home when I felt that I ought not to be out and I wanted to know if he couldn't hurry the matter up, that it was being delayed and the receiver was not doing the work as he had promised to do and he assured me it would be completed and I did believe what Judge Utz said, but I didn't get my work.

Q. When you went over to that saloon, Mr. Watts went with you?

A. Yes sir.

Q. You and the Judge and Mr. Watts went from the court house to the saloon?

A. Yes sir.

Q. Judge Utz was in a good humor?

A. I can't say that he was or was not. From the best of my recollection he appeared not to be in good humor.

Q. How many drinks did he take around there?

A. I think while Judge Utz was there there were three drinks taken possibly.

Q. And did I understand you to say that he was not in good humor?

A. Yes, he did not seem to be in the very best frame of mind.

Q. How long did you stay together at that place?

A. Judge Utz left us some time shortly after five o'clock.

Q. What time did you go to that cafe?

A. I should say between half past three and four o'clock, but I could not state exactly.

Q. You three were there from an hour to an hour and a half?

A. I think we were.

Q. What were you talking about?

A. I could not tell you now.

Q. Were you telling stories?

A. I could not tell the conversation.

Q. Nothing at all that occurred there?

A. Nothing more than I have related.

Q. You don't mean to say that took an hour and a half to tell that?

A. No sir.

Q. You have no recollection of anything that occurred.

A. No definite recollection.

Q. Where was D. A. Sachs at that time?

A. I could not tell you.

Q. You left him at the Court room in Judge Utz's chamber?

A. In Judge Utz's chamber.

Q. Then after the Judge went you and Mr. Watts stayed at this cafe until dark?

A. Till dusk I will put it.

Q. It was about six o'clock?

A. No sir, it was possibly twenty minutes or a quarter to six.

Q. What were you waiting for after Judge Utz left and your business was transacted?

A. Shortly after the Judge left Col. Jewett came in through the archway there and he sat down or rather was invited by Mr. Watts and he sat down and took a drink and then there was a discussion there about some case of Mr. Watts' on demurrer or something of that kind and they ran along in the conversation from one thing to another until we left somewhere about twenty minutes or a quarter to six.

Q. All three left together?

A. Yes, sir.

Q. Col. Jewett, Watts and yourself?

A. Yes, sir.

Q. Jewett stayed until you went to Louisville?

A. No Jewett stood with us for a few minutes and then excused himself and said he was going out to dinner that night or would have people at his house.

Q. He stayed until you left the cafe?

A. Yes, sir.

Q. You did not go back to the court house any more?

A. Yes, sir.

Q. To see whom?

A. To find D. A.

Q. Was he there?

A. I think not.

Q. The last thing you heard before you gentlemen went to the cafe, was that Judge Utz told Mr. Kelso to go to his office and prepare the order for the removal of this receiver?

A. Yes sir that is what I heard.

Q. And Kelso proceeded to his office so far as you know?

A. I could not tell you where he went.

Q. I understood he left the court room with you? Did you say that?

A. I said I would not be positive.

Q. After the Judge had said that to Kelso—that was said in the presence of Mr. Watts and Mr. D. A. Sachs?

A. Yes sir.

Q. Then you left Mr. D. A. Sachs in the court house and you don't know where he was that afternoon?

A. I do not after that.

Q. What do you say the discussion was in the court house at three o'clock after you say you got there, what was it about?

A. Henry Jewett or Harry Jewett, or whatever his name is—

Q. Call him Harry.

A. He had some kind of a report that it seemed he was to file and the judge was expecting, and he was wanting further time to file the report. The judge did not want to except it because it was not itemized and did not have vouchers.

Q. What part was Mr. Watts taking in that?

A. I could not say that I heard him say anything.

Q. Mr. Watts was the attorney for the receiver?

A. I do not know.

Q. What part was Mr. D. A. Sachs taking?

A. Let me correct that. I said I did not know. I think he was, I think I do know that.

Q. Was Mr. Watts taking any part in the discussion?

A. I don't think I heard him say anything.

Q. Was Mr. D. A. Sachs?

A. Not to my best recollection.

Q. Did you ask D. A. Sachs what he was doing there?

A. No sir.

Q. Do you know what he was doing there?

A. No, sir.

Q. You knew he had not been attorney for anybody in that proceeding did you not?

A. I knew I was attending to the Walter business and I did not know of any business he had.

Q. You knew he was not there on the same business you were?

A. He was not so far as I know.

Q. I understand your firm is arranged so that one partner takes one thing and another another?

A. Yes sir.

Q. You had the Walter's business?

A. Yes sir.

Q. You knew he was not on that?

A. Yes sir.

Q. Did it surprise you to find him there in that case?

A. No I cannot say I was surprised.

Q. Did you make any inquires of him why he was there?

A. And no sir.

Q. And he said nothing to you about it?

A. No sir.

Q. Who accompanied you back to Louisville?

A. Nobody.

Q. You did not see your brother or Mr. Watts after you left the cafe?

A. No Sir.

Q. Were you there at New Albany on Saturday?

A. No sir.

Q. That was the only time you were there?

A. That Friday afternoon.

Q. Did you know that your brother was back on Saturday?

A. I have no recollection now of knowing it.

Q. Where were you on that Saturday following your visit to New Albany?

A. I could not tell you—I was in the city of Louisville.

Q. Have you not an idea of what you were doing?

A. I have an idea if that will answer.

Q. Have you an impression?

A. I was attending to business or at my home.

Q. Were you sick?

A. I think not.

Q. Did you know that your brother was going back to to Louisville the next day, the Saturday following the Friday you were there?

A. No sir.

Q. Did you inquire over the telephone when you talked to your brother as to what he had been doing at New Albany?

A. No sir.

Q. Did you inquire of either of your brothers Saturday as to what D. A. Sachs was doing there on Friday?

A. I don't think I did.

Q. Did you know that your brother Mr. Sachs was representing Mr. Watts there in his trouble with the judge?

A. I cannot say whether I did or not.

Q. Did you know that your brother had been employed or solicited by Mr. Watts to go to New Albany to square him, Mr. Watts, with Judge Utz?

A. When?

Q. Either Thursday, Friday, or Saturday.

A. I could not tell you when I learned it, but I certainly did not know it when I was over there that Friday afternoon.

Q. You did not know when you did learn it?

A. No sir.

Q. You were not called in to consult Monday when these contempt proceedings of the Federal Court were up?

A. No sir.

Q. You accidentally came in?

A. My desk was in there and the letter press.

Q. Did you know what the consultation was for?

A. I presume I did.

Q. Did you go in purposely to hear what was being said?

A. No sir.

Q. But you happened in there two or three different times and heard these things?

A. I was forwards and backwards, two or three times, yes sir.

Q. For instance you heard John Watts ask the question of Mr. Kelso and Judge Utz as to whether your brother Mr. Sachs had had any part in advising these people in this receivership matter?

A. I made no such statement.

Q. You never heard anything of that?

A. I did not.

Q. What was it you heard John Watts say? Anything?

A. About what?

Q. About anything?

A. I heard John Watts say he did not think his brother W. ought to remain away, that he was a much younger man than the balance of them and intimated that he felt a little out of place in advising contrary to what Judge Utz and Mr. Kelso had requested.

Q. Did you hear Judge Utz say anything at that meeting on Monday?

A. I heard him say that he preferred that they would not go.

Q. Anything else?

A. I heard Judge Utz say to Mr. Kelso, as I told you a little while ago, he did not think the expenses would be as great as Mr. Kelso was expecting and he had some money in his hands or the court.

Q. Did you hear Mr. Kelso say what lawyers they should get in Indianapolis? Mention any names?

A. No sir, I was not in there at that time.

Q. While you were in the room, you never heard your brother say that he would prefer to Jamaica to going to Indianapolis because he would have to testify against Watts?

A. No sir.

Q. How much of the time do you think you were in that room when the consultation was going on?

A. I could not give you any idea, I don't know.

Q. How many times were you in there?

A. I think I was in the room where they were just one time.

Q. Morning or afternoon?

A. Afternoon.

Q. That conference lasted nearly all day?

A. There was some one or the other of them there pretty much all the day.

Q. Don't you know that they came at ten o'clock and stayed until nearly noon and went out to lunch and came back and stayed nearly until night?

A. I could not say when they came or left. I was not there either time.

Q. When you left, did you leave them there?

A. Yes sir.

Q. What time did you leave them?

A. I do not know what time of the day that was.

Q. What time did you usually leave?

A. They had left before I left for my supper.

Q. Did you see them go?

A. No sir.

Mr. Fairleigh: My understanding is that we offered in evidence the files of the bankruptcy proceedings. And you offered in evidence the record of the Floyd Circuit Court in the case of Ryerson & Son against M. Zier.

Mr. LaFollette: I offered that part of the two transcripts showing the entry of the 14th of February. You said at the time that you wanted to offer all of it.

Mr. Fairleigh: I do that now. I offer exhibit B with the response of Watts, with the understanding that the bankruptcy proceedings have been filed.

The defendants here rested.

W. C. Utz, recalled for the government and examined by Mr. Kealing testified as follows:

Q. You have been on the witness stand before in this case?

A. Yes sir.

Q. I will ask you to state to the court what if anything D. A. Sachs said on Saturday morning Feby. 21st, at your office at the court house at New Albany about the militia being called out.

A. He asked how it was done.

Q. State all that was said.

A. My recollection is that Mr. Kelso and I were in the office and D. A. Sachs was sitting next to the window next

to Spring Street, side of the court house, and he asked me, "how do you call out the militia?" I said, "why do you ask that?" And he said, "When I go into anything you know I go to the end."

Q. What, if anything, did you hear him say about being a state's rights man?

A. I heard him make that statement a number of times.

Q. Tell what he said.

A. He said he was a great state's rights man.

Q. State whether he said in that connection anything about calling out the militia?

A. Yes sir.

Q. You may tell the court whether at Mr. Sach's office in Louisville you said to Mr. Sachs or Mr. Kelso or any one in that office that you had money in your hands or in the hands of your receiver out of which you could pay the expenses of the people coming here to answer these contempt proceedings?

A. I don't think I said that. There was some discussion about that. There was a great deal of talk and I do not recall all that was said.

Q. I will ask you to state to the court if at that consultation at Mr. Sachs' office on Monday, the 23rd of February, at which you say you were present, J. R. Watts asked you whether his brother W. W. Watts had in any advised counsel or had anything to do with the taking of the property from the Federal Court receiver and you answered that he did not?

A. The form of the question is in, I would say no.

Q. If you had any conversation on that, tell the court what it was.

A. I did. Mr. John R. Watts, young Mr. Watts, was standing at the end of the table, and he called me to one side, I was sitting in a chair, and I got up and walked to where he was, and he asked me this question if his brother W. W. was the attorney for Mr. Kelso in the receivership and I said no, and that was all that was said on that subject.

Q. Was anything said about your making out affidavits and giving them to Mr. Watts on that subject?

A. By whom?

Q. By John Watts or anybody else.

A. No sir.

Q. I will ask you to state if at that conference on Monday at Mr. Sachs' office you said to the people in that conference that you preferred that W. W. Watts and D. A. Sachs would not come up here to answer the citation of this court?

A. No sir, I don't think I said that. There was considerable discussion about that. In view of what Mr. Watts

had said that the Judge of this court seemed angered at him. I don't think I said it that way. I might have said, if I said anything that it might be best at this time not to come. I may have made that statement.

Charles D. Kelso, re-called and examined by Mr. Kealing, testified as follows:

Q. What if anything did D. A. Sachs say to you or in your presence on Saturday the 21st of February, at Judge Utz's court room about the militia or calling out the militia?

A. He inquired of the judge as to the statute regulating the calling out of the militia and the Judge asked him why he asked that question, and he said when he got into a thing he went to the end of it.

Q. Is that all he said?

A. That is all I can remember.

Q. What if anything did he say about his being a great state's rights man?

A. He said he believed in state's rights, that he was a great man for that principle.

Q. I will ask you if it is true that at Mr. Sachs' law office, in Louisville, on Monday, at the time you were consulting over the citations sent from this court, you were asked the question by John Watts as to whether W. W. Watts had in any way advised or assisted in the prosecution of this receivership in the Floyd Circuit Court and you answered him that he had not?

A. No sir.

Q. Was anything of that kind said to you?

A. He put a question of that kind and I said that Mr. Watts was not my attorney but that I had heard Mr. Watts express opinions about the law of the case quite frequently during the time this matter was up.

Q. You remember the invitation that one of the Sachs gave to go to the cafe on that Friday afternoon?

A. I don't remember the invitation, but I know they went to Matt Claire's saloon.

Q. On that afternoon you may state whether D. A. Sachs remained in the court room or whether he went to your office?

Question objected to and objection sustained as having been asked and answered.

Mr. Kelso: I desire to make one statement about the relations between myself and Mr. Stotsenberg. They are very cordial.

Mr. Smith: We object, he has stated that.

A. Our relations are very cordial and he is now attending to my business. His father is staying at my office.

Mr. Miller: We object to that. He stated that identical fact.

The Court: He may state it again. I do not remember it.

Mr. Kealing: We have subpoenaed Mr. Ruth to rebut the statement made by Mr. Sachs that he never was in this plant and we have sent for the stenographer in Mr. Kelso's office and have sent for two deputy clerks, and they will be here in the morning.

Mr. Miller: I don't know how closely your Honor observes the rules of evidence in a matter like this, but with reference to the question of Mr. Sachs being in that place, they brought that out in their original case and then was the time to put in their entire evidence on that subject.

The Court: Strictly speaking, that may be true, but I will hear the evidence on that point. I want to know myself the truth about that.

The Court thereupon adjourned until tomorrow morning.

FRIDAY, MARCH 13, 1903.

MORNING SESSION.

The Court met pursuant to adjournment, present the same as on yesterday.

Fred S. Ruoff, a witness called on behalf of the Government in rebuttal, being first duly sworn testified as follows:

DIRECT EXAMINATION.

Questions by Mr. LaFollette:

Q. State your name to the Court.

A. Fred S. Ruoff.

Q. Where do you live?

A. New Albany.

Q. Are you the gentleman who acted as watchman at the M. Zier & Company plant under the direction of Mr. Kelso when he was appointed Receiver?

A. Yes sir.

Q. Are you acquainted with Mr. D. A. Sachs?

A. Not until that day.

Q. But you know him do you?

A. Yes sir.

Q. The gentleman that sits back there?

A. Yes sir.

Q. You may tell the Court if you were at the M. Zier & Company plant on Saturday and on Friday.

A. On Saturday.

Q. On Saturday were you first there?

A. Yes.

Q. The 21st of February?

A. I don't remember the date exactly.

By the Court:

Q. Just a moment: It was the day, the next day—

A. (Interrupting) The first day I had taken possession.

By Mr. LaFollette:

Q. The first day you had taken possession under the direction of Mr. Kelso?

A. Yes sir.

Q. You may tell the Court whether or not Mr. Kelso was at the plant on that day.

A. Him and Mr. Sachs came there I expect along between two and three o'clock.

Q. When you say Mr. Sachs you may state which Mr. Sachs you mean.

A. Mr. Sachs right there.

By the Court:

Q. Mr. D. A. Sachs the defendant here?

A. Yes sir, Mr. Kelso introduced me to him.

By Mr. La Follette:

Q. About what time in the day?

A. I judge along about two or three o'clock.

Q. Was there any statement made by Mr. Kelso in his presence or by Mr. Sachs himself about the plant?

A. Well they were discussing the matter and Mr. Sachs said there was very little left for us yet.

Q. Very little what?

A. Very little left.

By Mr. Kealing:

Q. For us yet?

A. For us yet. Yes sir, that is about all. They were discussing other matters; I didn't pay much attention to it.

By Mr. La Follette:

Q. You may state whether they went through the plant.

A. They went through over the platform; they didn't go off the platform very much; probably half the shop.

CROSS-EXAMINATION.

By Mr. Fairleigh:

Q. Tell the Court whether you are the same person who was cited for contempt in this case.

A. Yes sir.

Q. You were found guilty of contempt were you?

A. Yes sir.

Q. And put in jail therefor.

A. Yes.

Q. This was Saturday afternoon about two or three o'clock.

A. Somewhere around between two and three.

Q. You are certain about the hour?

A. No sir I wouldn't be certain about the hour.

Q. How certain are you about that?

A. Just about near that time.

Q. Was it between two and three somewhere.

A. I think it was between two and three.

Q. It couldn't have been before two?

A. I couldn't say; along between two and three; I didn't look what time it was.

Q. Did you take dinner that day anywhere?

A. I took dinner there at the shop.

Q. Had it with you?

A. Yes sir; brought to me.

Q. You had never seen Mr. Sachs before?

A. No sir.

Q. Did you ever see him since?

A. Yes sir.

Q. Where?

A. In the Court.

Q. When?

A. Monday.

Q. Of this week?

A. Yes sir.

Q. You never saw him from that time until you saw him at Indianapolis on this trial?

A. Yes; not from the time I seen him at the plant.

Q. What time had you been put in charge as watchman?

A. I was notified on Friday night before the Saturday about nine o'clock to report at Mr. Zier's at 7 o'clock in the morning.

Q. You came in the morning, Saturday morning at seven o'clock?

A. Yes sir.

Q. You had never heard of Mr. Sachs before had you?

A. Not that I know of.

Q. How long did Mr. Sachs and Mr. Kelso stay there?

A. I guess along about ten or fifteen minutes, something like that; I didn't take no particular note of the time they came there or what time they were there.

Q. Where are those boiler yards situated with reference to this Court House.

A. I judge about three blocks to the Court House.

Q. In what direction?

A. It is kind of Northwest.

Q. Do you know how they came there, whether they rode on the street car or walked?

A. I couldn't say.

Q. Where did you first see them after they entered or how they entered it?

A. They came there to the door; the door was locked.

Q. Did they knock on the door?

A. Yes sir; they called me. I recognized Mr. Kelso's voice when they called.

Q. Do you think there is any possibility of a mistake about the identification of Mr. Sachs? That you might be mistaken about the person?

A. No sir.

Witness excused.

William F. Ruoff, a witness called on behalf of the Government in rebuttal being duly sworn testified as follows:

DIRECT EXAMINATION.

Questions by Mr. LaFollette:

Q. You may state your name to the Court.

A. William F. Ruoff.

Q. Where do you reside?

A. New Albany, Indiana.

Q. Are you the deputy clerk in the Clerk's office of the Floyd Circuit Court?

A. Yes sir.

Q. How long have you served in that capacity?

A. As a sworn deputy for more than eight years; in the office for about eleven years.

Q. You are acquainted with Mr. C. D. Kelso?

A. Yes sir.

Q. Did you know of the fact of the case pending in your Court of Ryerson & Son against M. Zier & Company?

A. Yes sir.

Q. You may state to the Court whether or not you made the order book entries.

A. I made all of them.

Q. You are acquainted with Judge Utz of the Circuit Court?

A. Yes sir.

Q. Do you know Mr. W. W. Watts?

A. Yes.

Q. Do you know D. A. Sachs?

A. Yes sir.

Q. You may state to the Court if you remember the occurrence of Mr. W. W. Watts and Mr. D. A. Sachs coming over to New Albany and appearing before the Judge of the Floyd Circuit Court during the week of the 18th, 19th, 20th, and 21st of February last.

A. Did you ask me if I remembered that?

Q. Yes.

A. Yes sir I do.

Q. You may tell the Court if you can the first day that you now call to mind of their being present before Judge Utz after the 18th of February.

A. I am most sure it was the 19th.

Q. Do you remember whether or not you was present on the 18th when they were before Judge Utz, if they were?

A. Not that I remember of; I was in the office but I have no distinct recollection about the matter; never knew about this proceeding at that time or any jurisdictional matter with the Floyd Circuit Court.

Q. Do you remember then that they were there on the 19th which would be Thursday of that week.

A. Yes sir I remember that.

Q. You may tell the Court what you remember about that? About what hour you remember they were there and as definitely as you can the occurrences?

A. Judge Utz asked me to come up to his office about half past eight o'clock or possibly nine, and when I got up there I saw Mr. Sachs there; he was talking to the Judge; the Judge introduced me to him if I remember right about that. I think the Judge introduced me to him; he was discussing the matter of the suit of Ryerson & Son against Zier & Company.

Q. Was there anything being said about the bankruptcy proceedings or about the appointment of Mr. Connor as Receiver in the Bankrupt Court?

A. Yes sir.

Q. You may tell the Court what was said about that if you can remember?

A. Well they were just discussing the fact that Mr. Hester came up here I think and asked for the appointment of a Receiver in this Court, and probably—well they were discussing the matter of the Receiver appointed by this Court and discussing the matter of the suit of Ryerson & Son in our Court.

Q. Well who else was there during the meeting if you know? Well, during the forenoon if you can remember?

A. I think only Mr. Kelso to the best of my knowledge besides Mr. Sachs.

Q. You do not remember about Henry Jewett coming in and talking about turning over the property, do you?

A. Well yes sir I do.

Q. Well you may state to the Court whether or not either on that day or on the day following, which would be Friday, there were any orders made which you were directed to enter of record?

A. Well in the first place I think there was an order made holding Mr. Watts in contempt of the Floyd Circuit Court;

the next one holding the New Albany Trust Company in contempt, and these were all proceedings as of the 20th; but I think the proceedings in the first two I have named were probably made on the 19th; then there was an order made for the removal of the New Albany Trust Company which was filed by me and entered of record and the qualification of Mr. Kelso as Receiver and an order showing the refusal of Mr. Connor to turn over the property, and the Judge issuing a summary writ against Mr. Connor to turn over the property—or of the Sheriff to take the property. I think that was all.

Q. Now you may tell the Court what was said if anything about those orders and in connection therewith by either Mr. W. W. Watts or Mr. D. A. Sachs before Judge Utz, or in your hearing at any time.

A. Well they were discussing the carrying out of all these orders, all the parties present, Mr. Sachs and Mr. Kelso and Judge Utz. I dont remember of Mr. Watts having been there but I think once; I don't think that he took any hand in the proceedings at all that was noticeable, that I could notice. If he was he didn't say anything. I don't remember him saying anything particularly.

Q. Did Mr. Sachs say anything about it?

A. Yes sir.

Q. Can you call to mind anything he said?

A. Well he discussed carrying out all these orders; his discussion bordered upon the contents of all of these orders; in fact the discussion was along these lines before the orders were made, before they were drawn up.

By the Court:

Q. What orders do you refer to?

A. These vacation orders.

Q. Were those orders with reference to taking the property from Mr. Connor?

A. Yes sir.

Q. And the summary writ issued to the sheriff?

A. Yes sir.

By Mr. LaFollette:

Q. Do you remember of having been furnished with an addition to be entered in connection with the order book entry of February 14th, the last day of the term, noting the withdrawal of C. D. Kelso as attorney of record for certain parties?

A. Yes sir.

Q. You may state who furnished you with that entry.

A. Mr. Kelso; he wrote it also; it was in his handwriting.

Q. You may state whether or not you entered that?

A. I did enter it, yes sir.

Q. You may state who was in company with Mr. Kelso at the time that he prepared and furnished you, or when he furnished you that order to be entered?

A. Mr. Sachs and Judge Utz.

Q. Do you remember when that was furnished you—

By the Court:

Q. (Interrupting) Wait just a moment. Read that question and answer.

The preceding question and answer were read by the reporter.

Q. The Court: Well which order to be entered? Does he mean that alteration?

The Witness: Yes sir, that is the one I speak of. That was made before the record was signed by Judge Utz. It was on the last day of the term and generally the proceedings of the last day of the term are fifty or one hundred pages long; I couldn't get them up on the last day of the term.

By Mr. LaFollette:

Q. That is you mean to say that the order book entry had not yet been signed by the Judge?

A. No sir.

Q. And this addition was made to it on the 20th of February?

A. Yes sir.

Q. And written in, and when finally signed up made to appear as part of the business done on the 14th?

A. Yes sir I take it that way.

Q. The addition which relates to the withdrawal of Mr. Kelso was in fact made and handed to you on the 20th of February was it not?

A. I think it was the 20th; yes sir.

Q. Do you remember what time in the day and upon what day the writ was given out from your office addressed to the Sheriff directing him to take the property of M. Zier & Company and deliver it to Mr. Kelso?

A. Yes sir, that was on Friday the 20th of February.

Q. At what time in the day?

A. Why it was late in the evening; I don't remember just exactly the time; probably six o'clock.

Q. You may state to the Court whether or not Mr. Sachs had gone away from that office before that was issued?

A. I think he did yes sir.

Q. You may tell the Court whether it had been talked of while he was there at your office?

A. It wasn't discussed in our office; it might have been discussed up in the Judge's office.

Q. Whether you knew of it? Whether it was in fact talked of in your presence when Mr. Sachs was present?

A. I think it was. I have no distinct recollection on that but it was all in connection with these other proceedings, and that is my recollection of it.

Q. Mr. Ruoff do you remember that there was filed in the Floyd Circuit Court an intervening petition of Frederick D. Connor, Receiver in bankruptcy, asking that the property of M. Zier & Company be turned over to him as such Receiver.

A. I think I do; yes sir.

Q. Who appeared in connection with that petition? What attorneys?

A. Now in relation to that there were two orders made as of February the 14th I think on that matter. You will find there was a small order made on the last day of the term, the last entry on that day following that addition to that record and I think that shows the filing, or Mr. Connor asking leave to intervene in the Ryerson case in the Court and asking that the property be turned over to him as Receiver.

Q. What particularly I wanted to know is you may tell the Court whether or not in connection with that petition and order there was anything said by Mr. D. A. Sachs on the 20th, on the 19th or 20th of February in reference to any change in that in any way?

A. Now which one do you speak of? There was a long order made as of the 14th I think showing the appointment of Mr. Connor as Receiver?

Q. Well either one of those orders?

A. Well that small order was made on the 20th I think, drawn up by Mr. Kelso, and Judge Utz and Mr. Sachs were present when it was drawn up and I think took part in all the discussion.

Q. That is the one as to Mr. Kelso withdrawing?

A. No, that is the order drawn up showing that Mr. Connor asked leave to intervene.

Q. Now was there any change made in that or anything said about it by Mr. Sachs on the 20th?

A. In the other order there was no change made in that at all because it was drawn on the 20th?

Q. The other one?

A. In the other one there was no change made in that at all that I know of.

Q. Was there any talk between Mr. Sachs and Mr. Kelso about it in your presence?

A. I don't remember.

Q. You may also state to the Court whether or not you had any conversation with Mr. D. A. Sachs about the M. Zier & Company plant as to whether or not he had seen it and what it was worth?

A. He stated to me on the corner of Pearl and Spring Street in New Albany Saturday evening about six o'clock that he had been there and he didn't think what was out there was worth five thousand dollars.

By the Court:

Q. That was Mr. D. A. Sachs?

A. Yes sir.

Cross-examination by Mr. Fairleigh:

Q Mr. Rouff you are the son of the Mr. Rouff who has just testified.

A. Yes sir.

Q. You are the Deputy Clerk for the Floyd Circuit Court?

A. Yes sir.

Q. The Court adjourned on the 14th of February?

A. Yes sir.

Q. Thereafter you were quite busy getting up the orders of the Court of the last day?

A. Yes sir.

Q. Your whole time was occupied thereabout?

A. Yes sir.

Q. It was your duty to enter orders upon the Order Book?

A. Yes sir.

Q. Many of them were left over from the last day?

A. Yes sir.

Q. To be entered on the last day?

A. Yes sir.

Q. And which had been ordered before the adjournment of the Court?

A. Yes sir.

Q. You have said, or from what you have said I take it that Mr. D. A. Sachs was present at the time the order was made by Judge Utz directing the issuance of a writ to the Sheriff of Floyd County commanding him to take the property from Mr. Connor Receiver and turn it over to Kelso Receiver. Now is it true that at the time that order was made by Judge Utz Mr. D. A. Sachs was present?

A. To the best of my recollection he was.

Q. The order for that writ was entered late that afternoon or evening?

A. It was not entered till several days after; it was filed that day.

Q. When was it filed?

A. Filed on February the 20th.

Q. Late in the afternoon?

A. Yes sir I think so; possibly two or three o'clock; it might have been that or sometime during the afternoon.

Q. Do you know it was five or six o'clock?

A. The order for the issuance of the writ?

Q. Of the writ.

A. Possibly it was.

Q. What time do you leave your office in the afternoon usually?

A. Well from five to half past, sometimes six.

Q. Do you remember to have been there later that afternoon than usual?

A. Yes sir.

Q. Who asked you to remain there?

A. Well the Court, Judge Utz was still upstairs and it is always customary for the Clerk to wait till the Court goes away.

Q. Precisely. Now upon reflection can you say that you are certain that Mr. Sachs was present when that order was filed for the issuance of the writ?

A. Well I don't know that I could say certain that he was present because Mr. Scott was out of the office and I had to attend to the duties of the office and to the Judge's office too. The Clerk's duties and that; I had to be between both of them the whole time.

Q. So that you can't be certain about that at all?

A. At the time this order was made?

Q. Yes this order for the issuance of the writ?

A. I think I was present but I wouldn't be certain, too certain about it; I thought I was certain.

Q. But would you be certain that Mr. Sachs was there when that order was entered?

A. I think he was there the entire day of the 20th.

Q. Do you mean all the time that the Clerk's office was open?

A. Yes sir.

Q. And didn't leave until the Clerk's office was closed?

A. I think not.

Q. Are you at all certain about that?

A. I am absolutely sure he was there the entire morning, and I think he was there in the afternoon.

Q. He was there in the afternoon I have no doubt, but I am trying to fix the fact as to whether he was there at the time the order for the issuance of this writ was made. Could you at all be certain about that?

A. To the best of my recollection I think he was.

Q. Now going back to this addendum made to the order of the 14th, that long order?

A. Yes sir.

Q. I understood you to say that the matter of that addendum was brought to you by Mr. Kelso and that it was in Mr. Kelso's handwriting.

A. Yes sir, it was handed to me by Mr. Kelso in the Judge's office.

Q. It was not typewritten?

A. No sir.

Q. Are you certain that Mr. Sachs was present when that addendum was handed to you?

A. Yes sir I am sure he was there.

Q. Are you certain he knew anything about it?

A. He was present.

Q. That is all you know?

A. Yes sir, he was talking with Mr. Kelso and the Judge about it?

The Court: About the addendum?

By Mr. Fairleigh?

Q. About what?

A. About this order that Mr. Kelso wrote.

Q. Who else was present?

A. I think myself and Judge Utz and Mr. Kelso and Mr. Sachs were all there.

Q. Can you say what was said by Mr. Sachs about that?

A. No sir I couldn't; I couldn't tell.

Q. Where do you say you met Mr. Sachs on the street when he told you that he had been to the M. Zier & Company works and that they were not worth more than five thousand dollars?

A. On the corner of Pearl and Spring Streets.

Q. On what day was that?

A. Saturday evening about six o'clock.

Q. Late?

A. Six o'clock.

Q. Late that evening?

A. Yes sir.

Q. Who was with him?

A. Mr. Watts.

Q. Who else?

A. That was all.

Q. Was Mr. Zier standing there?

A. No sir.

Q. Was Mr. Kelso there?

A. No sir.

Q. What were they doing on the corner?

A. Waiting for a street car I think to go to Louisville.

Q. You didn't see Mr. Kelso there at all?

A. No sir he wasn't there. Possibly he might have left a few minutes before that. I think he had left a while before that. They were standing up there talking and we had just come out of the Court House.

Q. When did he say he had been to the works?

A. He said that at six o'clock Saturday evening.

Q. I know; when did he say he had been out to the works?

A. I judged from his conversation it was sometime during the afternoon.

Q. Was Mr. Watts present and Mr. Sachs and you and nobody else?

A. No sir.

Witness excused.

Edgar B. Martin a witness called on behalf of the Government in rebuttal being duly sworn testified as follows:

Direct-examination. Questions by Mr. LaFollette:

Q. Mr. Martin you may state your name to the Court.

A. Edgar B. Martin.

Q. Where do you live?

A. New Albany.

Q. You may state whether or not you are the Deputy Clerk in the Floyd Circuit Court.

A. Yes sir.

Q. You may state whether you were about the office on the 19th, 20th and 21st of February last.

A. Yes sir.

Q. You may state whether or not on either of those dates probably on Friday the 20th you were called up to Judge Utz's room.

A. On Friday the 20th about half past one I was called to his room.

Q. Who was present at that time?

A. Mr. Kelso, Judge Utz and Mr. D. A. Sachs and Mr. Rouff.

Q. You may state to the Court what was being talked of, what was said while you were in the room in regard to the matter or any matter connected with the Receivership of the M. Zier & Company plant at New Albany.

A. I know after I got in there they began discussing the contempt proceedings against Mr. Connor Receiver and Mr. Hester.

Q. Mr. Connor the Receiver appointed by this Court?

A. Yes sir.

Q. Of the M. Zier & Company plant?

A. Yes sir?

Q. Now you may state what was said.

A. Mr. Sachs was asking in relation to affidavits and to prepare the information and affidavits and Mr. Kelso says, "Who will make those affidavits'" I happened to look up at the time and he said, "Mr. Martin could you make them?"

Q. Who said that?

A. Mr. Kelso said that. Judge Utz answered for me and said, "I don't think it is his place to make them." Then Mr. Sachs said, "Why not you make them Mr. Kelso?"

Mr. Kelso studied a few minutes and said "I could make it as to Mr. Connor but not as to Mr. Hester." Then they got some volumes of law and were discussing the law on the contempt proceedings.

Q. Who was talking about the law of the case?

A. Mr. Sachs.

Q. In the presence of Judge Utz and Mr. Kelso?

A. Yes sir.

Q. Then did you retire from the room?

A. I was called down stairs

Q. Was that all the conversation that you heard.

A. That is all yes sir.

Q. Did you hear any conversation at any other time on the part of Mr. D. A. Sachs in regard to the proceedings against Connor or Hester, or the Trust Company or Mr. Watts?

A. No sir, not Sachs.

Witness excused.

Charles D. Kelso recalled as a witness for the Government in rebuttal being duly sworn testified as follows:

Direct examination. Questions by Mr. LaFollette:

Q. Mr. Kelso you may state to the Court whether or not pending this controversy at New Albany Mr. Hester the attorney said to you that Mr. W. W. Watts was the man that Judge Anderson was after?

A. No sir, he did not.

Q. You may state whether you stated that he had so told you over at Sachs' office at Louisville.

A. I did not.

Cross-examination. By Mr. Fairleigh:

Q. If you said anything about that at all Mr. Kelso, will you state what you said?

A. I said to those gentlemen at Mr. Sachs' office that I had a talk with Mr. Hester on the car about this order and that I inferred that Judge Anderson was angry at Mr. Watts.

Witness excused.

Bertha L. Scott, a witness called on behalf of the Government in rebuttal being first duly sworn testified as follows:

Direct examination. Questions by Mr. LaFollette:

Q. Miss Scott you may state your name?

A. Bertha L. Scott.

Q. Where do you live?

A. New Albany, Indiana.

Q. Are you a stenographer?

A. Yes sir.

Q. Are you employed in the office of Mr. Charles D. Kelso?

A. I am.

Q. Were you employed in his office on the 19th, 20th and 21st of February last?

A. I was.

Q. Do you know Mr. W. W. Watts?

A. No sir.

Q. Do you know Mr. D. A. Sachs?

A. Yes sir.

Q. Was he at Mr. Kelso's office on Friday of that week and on Thursday?

A. On Friday, yes sir.

Q. He was there on Friday?

A. Yes sir.

Q. Do you remember whether he was there on Thursday?

A. I don't remember that he was.

Q You may tell the Court whether or not you as the stenographer in that office had dictated to you any orders or papers of any kind?

A. I did.

Q. You may state who gave you the dictation?

A. Mr. Kelso gave the dictations and Mr. Sachs offered suggestions.

By the Court:

Q. Mr. D. A. Sachs?

A. D. A. Sachs, yes sir.

By Mr. LaFollette:

Q. Have you examined this morning the copy of a pleading which begins: "Comes now the United States Tube Company by D. A. Sachs its attorney and respectfully represents to the Court," etc., and is signed "Respectfully submitted, United States Tube Company by D. A. Sachs, its attorney," and then has a jurat attached to it signed, "D. A. Sachs" and "Subscribed and sworn to before me this 20th day of February, 1903, Bertha L. Scott, Notary Public."

A. Yes sir.

Q. Hav you examined that?

A. Yes sir.

Q. And the orders immediately following that?

A. Yes sir.

Q. You may tell the Court whether or not that pleading on behalf of the United States Tube Company was dictated to you by Mr. C. D. Kelso in the presence of Mr. D. A. Sachs?

A. It was.

Q. You may state whether or not during the time that that was being dictated to you there was any suggestions or additional dictation made by Mr. D. A. Sachs?

A. There were suggestions.

By the Court:

Q. By whom?

A. By Mr. Sachs, D. A. Sachs.

By Mr. LaFollette:

Q. You may state whether you afterwards transcribed that in longhand?

A. I did.

Q. What did Mr. D. A. Sachs do in the way of reading it over?

A. I read it over to Mr. D. A. Sachs before I wrote it there on the typewriter.

Q. From your notes?

A. From my notes.

Q. Then after you transcribed it in long hand what did he do?

A. To the best of my recollection he read it over.

Q. State whether or not he signed it.

A. He signed it.

Q. State whether or not he swore to that before you.

A. He swore to it before me.

Q. You may state whether or not the orders that were made following that which begins: "And the application of said Receiver to be permitted to resign as such is now disallowed by the Judge of this Court for the reason that said Receiver in its said report and resignation openly and wilfully shows to the Court that it has violated the trust reposed in it by the Judge of this Court and has wrongfully, unlawfully and without the leave or permission of the Judge of said Court or said Court surrendered the possession of the property of which it is the custodian to Frederick D.Connor." State whether or not that order as it is copied in these pleadings was dictated to you on that same day?

A. To the best of my recollection it was.

Q. You may state to the Court what time in the day or what different parts of the day Mr. D. A. Sachs and Mr. Kelso made these dictations to you.

A. The dictations were made in the forenoon, I think near 12 o'clock, and I remained there until about one or half past one o'clock in the afternoon.

Q. You may state to the Court whether or not thi› dictation was made in the presence of Mr. D. A. Sachs.

A. What dictation?

Q. This one following the affidavit that he made? This subsequent dictation.

A. Yes sir.

Q. The orders that were made?

A. Yes sir.

Q. State whether or not he made suggestions and additions to that dictation, as to whether or not—

By Mr. Fairleigh: That question is objectionable. It is very leading.

By the Court:

Q. What if anything did he do with reference to making suggestions as to the orders that were made when they were dictated?

A. I can't say what suggestions that he made now but I know that he offered suggestions.

By Mr. LaFollette:

Q. You may state what other orders or writs or orders of any kind were made that afternoon if you can call to mind.

A. There were other orders made that afternoon.

Q. Can you remember of what character in substance?

A. I think that there was one in relation to the appointment of Mr. Kelso as Receiver and then there was a writ.

Q. You may explain that to the Court? What kind of a writ?

A. To the Sheriff.

Q. Do you remember in substance what that writ was to the Sheriff?

A. To take possession of the Zier property.

Q. You may state whether or not Mr. D. A. Sachs was present while that was being dictated to you.

A. Yes sir.

Q. What if anything did he do in connection with it while it was being dictated?

A. He heard it dictated.

Q. You may state whether or not you prepared that afterwards in longhand.

A. I did.

Q. To whom did you deliver them?

A. I just put them on Mr. Kelso's desk. I suppose he took them.

Q. About how late in the afternoon was it that the writ to the Sheriff was dictated to you.

A. It was at or near six o'clock.

Q. Mr. Sachs was there at the time it was dictated?

A. Yes sir.

Witness excused.

W. W. Watts, recalled, for the defendants, and examined by Mr. Smith, testified as follows:

Q. You heard Mr. Ruoff's statement in regard to meeting you and Mr. Sachs at the corner of Pearl and Spring Streets Saturday afternoon, about six o'clock on the 21st where he was standing waiting for a car? And you heard his statement in which he said Mr. Sachs said to him that he had been to the Zier plant and that he did not consider it worth more than $5000. Did this witness who testified meet you gentlemen there at that time?

A. I do not recall that he did and I don't think he did.

Q. Did he have any such conversation as he detailed in your presence or did Sachs make any such statement?

A. I think not.

Cross-examined by Mr. LaFollette:

Q. Were you with Mr. Sachs Saturday evening on the streets of New Albany?

A. I was at some time, but just at what time I do not remember.

Q. You were waiting for a car near that corner spoken of?

A. Yes sir, we were.

Q. And you and Mr. Sachs took a car at or near that point to go back to Louisville sometime Saturday evening?

A. Yes sir.

Both sides rested and this was all the evidence introduced before his Honor on this hearing.

(Petition of Receiver to Floyd Circuit Court. Introduced in evidence.)

IN THE FLOYD CIRCUIT COURT.

JANUARY TERM, 1903.

Jos. T. Ryerson & Son,
vs.
M. Zier & Company.

TO THE HONORABLE W. C. UTZ, *Judge of the Floyd Circuit Court:*

Frederick D. Connor, Receiver appointed by the United States District Court for the District of Indiana, intervening in the above entitled cause, respectfully shows to the Court:

That on the 11th day of February, 1903, by the consideration of the United States District Court for the District of Indiana, upon the petition of the Inland Steel Company, John C. Thurston and John Dey, doing business as Dey Time Register Company, he was appointed by said Court as receiver, with authority to take charge of all property of said M. Zier & Company and to hold the same in his custody until the further order of said Court.

That he has duly qualified as such receiver according to the requirements of the order appointing him, by filing his bond therein to the approval of the Hon. Albert B. Anderson, Judge of said Court, and is ready to assume control of the property of said M. Zier & Company as soon as the same is turned over to him by The New Albany Trust

Company, heretofore appointed as receiver in this cause by this Court; a certified copy of the order of the United States District Court is filed herewith and attached hereto marked exhibit "A."

Your petitioner therefore, respectfully prays that said The New Albany Trust Company be directed and required to immediately turn over to this petitioner all of the property, assets, books, moneys and other effects of said M. Zier & Company now in its possession and control and to immediately file with this Court its account in writing, showing the amounts of money collected by it and now on hand.

The petitioner further prays that said The New Albany Trust Company be discharged as such receiver herein.

FREDERICK D. CONNOR,
Receiver of M. Zier & Company.

STATE OF INDIANA, }
} *ss.*
County of Floyd. }

Frederick D. Connor, being duly sworn on his oath says that the matters stated in the foregoing petition are true in substance and in fact as he verily believes.

FREDERICK D. CONNOR.

Subscribed and sworn to before me this 14th day of February, 1903.

CHARLES B. SCOTT,
Clerk F. C. C.
By William F. Ruoff,
Deputy.

UNITED STATES OF AMERICA, }
} *ss.*
District of Indiana. }

I, Noble C. Butler, clerk of the District Court of the United States within and for said District, do hereby certify that the above and foregoing are, first, a full, true and complete transcript of the record in the matter of M. Zier & Company, bankrupt; second, a full, true and complete transcript of the record in the case of the United States against Charles D. Kelso and others, as fully as the same appear upon the records and files now in my custody.

Witness my hand and the seal of said Court at Indianapolis in said District, this 17th day of March, A. D. 1903.

NOBLE C. BUTLER,
Clerk.

[Seal.]

Supreme Court of the United States.

Nos. 15 and 16, Original—October Term, 1902.

In re William W. Watts, Petitioner.
In re David A. Sachs, Petitioner.
} On habeas corpus and certiorari.

[May 18, 1903.]

M. Zier & Company, a corporation located at New Albany, Indiana, engaged in the boiler manufacturing business, was hopelessly insolvent on and prior to December 30, 1902, and some thousands of dollars had been drawn from its treasury by the manager of its affairs for the purpose of making certain payments, of which $3,100 had been paid to Ryerson & Son, a corporation of Chicago, Illinois, and a large creditor of the Zier Company, previously to December 30, and $9,600 was on that day placed by M. Zier, the manager of the company, in the hands of his attorney to be paid over to Zier's sister-in-law, who was a stockholder and creditor of the Zier corporation. It was arranged by Zier's attorney with the Chicago corporation on December 29 that the latter should apply for the appointment of a receiver of the Zier corporation, and that the New Albany Trust Company should be appointed receiver, and this resulted in a complaint filed by the Ryerson corporation, represented by W. W. Watts, a member of the bar of Kentucky, in the Circuit Court of Floyd County, Indiana, charging that the Zier company was insolvent and was dissipating its property and assets, and praying for the appointment of a receiver, "and that the court shall make such orders as shall be necessary and proper for the preservation of said property, for the continuance of said business for the purpose of completing unfinished contracts," &c., to which defendant voluntarily appeared and consented to the appointment of the New Albany Trust Company as receiver. The appointment was accordingly made, and the Trust Company immediately qualified and proceeded to administer the estate and wind up its affairs.

On January 16, the Trust Company, as receiver, filed its report and petition, giving an inventory and appraisement of the assets of Zier & Co., the receipts and expenditures of the receiver to that date, the particulars in respect of outstanding contracts; raising the question as to the further operation of the plant, and advising an order for a meeting of the creditors to consider that subject; requiring creditors to prove their claims, and enjoining them from the prosecution of suits except by intervention. A list of the creditors was attached, which included the Inland Steel Company, John C. Thurston, and the Dey Time Register Company.

The court entered an order directing such meeting to be held January 24, and notice by mail to be given, which was done, and the meeting was held on that day, a large number of creditors being represented, including the Inland Steel Company. An order was thereupon entered for payment of rent, the completion of unfinished contracts, for the continuance of the operation of the plant to a specified extent, for the issue of certificates of indebtedness to a small amount, but that no new contracts should be made. It was further ordered that creditors be notified by mail and by publication to file their claims on or before May 11, and "that all creditors and other persons be and they are hereby enjoined and restrained from prosecuting any claim or suit against this estate except by intervention in this cause or by first obtaining leave of this court."

February 6, 1903, the Inland Steel Company, John C. Thurston, and John Dey, doing business as Dey Time Register Company, creditors of the Zier corporation to the amounts of $935, $15, and $100, respectively, filed their petition in bankruptcy in the United States District Court for the District of Indiana against that corporation to have it declared a bankrupt. The petition alleged that the company was hopelessly insolvent and had committed, within four months next preceding the filing of the petition, acts of bankruptcy, which were specified. It was further alleged that it was necessary, for the preservation of the estate of Zier & Company and for the benefit of its creditors alike, that a receiver in bankruptcy be appointed at once to take charge of the affairs of said company. On February 11 a further petition was filed by the Inland Steel Company, and, on the same day, a supplemental petition, in which the appointment by the Circuit Court of Floyd County of a receiver and his being put in charge of the insolvent's property, were set up as additional acts of bankruptcy.

The District Court thereupon appointed Frederick D. Connor as receiver, and directed that he should take into his possession the plant of Zier & Company and all its other property, and further ordered that the New Albany Trust Company should deliver up to the receiver all the property of Zier & Company and refrain from in any way interfering with him. The receiver immediately qualified by giving bond as required by the court.

February 13, 1903, and before the receiver of the District Court had made demand for the property, on learning of Mr. Connor's appointment as receiver, Mr. Watts, after consulting with the local attorneys of Zier & Company, communicated with the District Judge and requested that the Federal receiver should not proceed until he, Mr. Watts, could procure an order from the Floyd Circuit Court permitting him to do so, and could come to Indianapolis, and present to the District Judge reasons why the receiver should not have been appointed by that court, and why his order to that effect should be vacated. The District Judge immediately caused the court's receiver and the attorneys interested in the case to be notified

to take no further steps until a hearing could be had on the questions suggested by Mr. Watts, on February 16, at Indianapolis. No further action was taken by the receiver of the District Court, but he presented to the Floyd Circuit Court a petition setting forth his appointment and qualification, together with a certified copy of the order appointing him, on the morning of Saturday, February 14, and asked the delivery to him of the property and effects of Zier & Company and the discharge of the Trust Company as receiver. The Floyd Circuit Court entered an order reciting that Connor, as receiver, came by his attorney, "and by leave and order of the court, and upon his own motion, makes himself a party to this proceeding, and thereupon by leave of the court files his verified petition showing his appointment as receiver of said M. Zier & Co. by order of the United States District Court for the District of Indiana," and praying for the surrender of the property, "and the matter of said petition is now continued until the next term of this court." Saturday, February 14, was the last day of the term, and the next term of the court commenced on the ninth day of March.

On the same day, February 14, the Trust Company, by Watts, its attorney, filed its petition, framed by him, which alleged that the Trust Company was carrying out as receiver the terms of the order of January 24; that that order had been entered without objection from the Inland Steel Company, John C. Thurston or the Dey Register Company, or any creditor; that the three last-mentioned creditors had filed a petition in involuntary bankruptcy against M. Zier & Company, February 6, 1903; that supplemental petitions were filed February 11, 1903, but that the petitions, although setting up the receivership in the State court, had not shown to the United States District Court the participation of the Inland Steel Company in the proceedings of January 24, its appearance, and the restraining order and injunction; that thereupon the order had been obtained in the bankruptcy proceedings appointing Connor receiver, and directing him to take charge of the estate of M. Zier & Company in bankruptcy, and directing the receiver of the State court to deliver up the property. The petition further averred that the creditors whose appearance was noted in the State court on January 24 had claims aggregating $53,279.51; that creditors with claims aggregating $11,622.49 had filed claims with the State court receiver, making a total of $64,902 in amount, so filed or appearing, out of a total liability of $76,463.36; that the total number of creditors was seventy-six; that thirty-seven appeared to the action, and twenty-five, including the Dey Time Register Company, had filed their claims with the State court receiver, making a total of sixty-two creditors who had appeared or filed their claims.

That, with a view to the due observance of the comity existing between the State and the Federal courts, and of avoiding a clash of jurisdiction,

petitioner had communicated through its attorneys with the United States District Judge and requested the non-enforcement of his order until after the matters in question had been presented to the State court, with the request that that court direct it and its attorneys to lay said matters before the judge of the District Court, whereupon the District Judge requested counsel to notify the attorneys of the creditors petitioning in bankruptcy that the matter would be heard on Monday, February 16, in Indianapolis, and that in the meantime the order appointing Connor was not to be enforced.

The petition further alleged that the court was about to adjourn over to the first day of its next term, March 9; that the order of January 24 directed petitioner as receiver to go on and complete various contracts; that it had entered upon the work; that the operation of the plant was for the beneficial purposes of the estate; and that the stoppage of the plant would involve loss to the creditors and many complicated questions of damage; that it would work great hardship to leave the estate with the court adjourned and without instructions as to what to do; and that the petitioner was this court's officer, and must be ordered and directed by this court, only, with respect to the property in its hands.

Petitioner averred that the injunction and restraining order of the State court had been knowingly violated by the Inland Steel Company and the Dey Time Register Company; that these two creditors and all other creditors were estopped from prosecuting the petition in bankruptcy, and from seeking to take from petitioner the assets in its hands as receiver; and that all the creditors were enjoined from prosecuting any attempt to take from the receiver any of the assets in its hands except by leave. And, further, that the record in the District Court of the United States for the District of Indiana did not disclose all the facts regarding the matters herein; that that court had no information as to the restraining orders, and estoppels, by entry of appearance, participation, and otherwise. That the assets of the Zier Company were *in custodia legis;* that the parties had submitted themselves to this forum; that the court came into lawful custody of the property, and the orders and proceedings were entered and had before the institution of the bankruptcy proceedings, and the attempt to oust this court and receiver therefrom. Petitioner, therefore, asserted its belief that the District Court, under the peculiar circumstances of the case, would coincide with the State court, if it should deem wise to enter orders specifically restraining the Inland Steel Company, John L. Thurston and the Dey Time Register Company and their attorneys; Connor; and the United States marshal from further prosecuting any matters in relation to the estate or of the taking of the assets in any manner, except by intervention in this action.

Petitioner prayed for instructions; that it should present the facts to the District Court of the United States, either by limited or general appearance in the bankruptcy proceedings, and ask such relief, if any, as this court might direct; and that an injunction be granted.

An order was then entered, prepared by Mr. Watts, embodying matters set up in the petition, granting an injunction, ordering the operation of the plant to continue, and directing the receiver, through its attorneys, to proceed to Indianapolis and there by a limited appearance to lay before the District Court the facts with regard to the matters herein, and to suggest to that court the orders of this court, and its belief that with full information of the facts the order of that court would at most have been a direction for application to be made to this court for the delivery of the assets to the receiver or trustee of the District Court. It was further ordered that the Inland Steel Company, John L. Thurston, and the Dey Time Register Company show cause why they should not be punished for contempt in disobeying the orders of this court by taking action without obtaining leave.

On Monday, February 16, Mr. Watts, with the vice president of the New Albany Trust Company, receiver, appeared in the District Court at Indianapolis, and the proceedings in the State court, including the petition and order of February 14, were laid before that court, and hearing was had that day and on February 17. At the conclusion of the argument the District Judge announced his ruling that the court in bankruptcy had supreme and exclusive jurisdiction in the matter; and asked Mr. Watts and the representative of the Trust Company if it were not better to avoid the clash of jurisdiction by voluntarily turning the property over to the Federal receiver, indicating at the same time that otherwise it would be his duty to exert the power of the court in vindication of its jurisdiction. Mr. Watts and his colleague thereupon announced that the property would be turned over to the Federal receiver. Mr. Watts at the same time stated to the court that he would do all in his power to see that the proceedings in the State court of February 14 were stricken out, and that he would endeavor to have the State court make an order directing the surrender of the property.

The District Court, on February 17, made the following order:

"This cause coming on now to be heard upon the petition of Frederick D. Connor, filed herein on the 16th day of February, A. D. 1903, for the instruction of the court concerning the property and assets of said M. Zier & Company, which are now in the possession of the New Albany Trust Company, as receiver of the Floyd Circuit Court, in a suit therein pending against said M. Zier & Company, because of their insolvency; and the petitioning creditors in this cause and said Connor, receiver as aforesaid, being now present and represented by George H. Hester and William Wilhartz, their solicitors, and said New Albany Trust Company, receiver

as aforesaid, being now present and represented by Henry E. Jewett, its vice president, and by William W. Watts, its solicitor, and after argument by counsel, the said New Albany Trust Company, as receiver of the Floyd Circuit Court, by its said vice president, having voluntarily offered and agreed, by and with the consent and approval of said William W. Watts, its solicitor, in open court, to surrender full and immediate possession and control of the property and assets of said M. Zier & Company, in its possession or under its control, as receiver of the Floyd Circuit Court, to said Connor, as receiver of this court, upon the presentation by him to said New Albany Trust Company of a certified copy of the order for his appointment as such receiver heretofore made by this court. It is now hereby ordered by the court that said Connor, receiver as aforesaid, forthwith present a certified copy of the order for his appointment as such receiver to the said New Albany Trust Company, and immediately thereupon take full possession and control of the property and assets of said M. Zier & Company that are now in the possession or under the control of said New Albany Trust Company, as receiver of the Floyd Circuit Court."

On February 19 the Trust Company by its vice president filed a report in the Floyd Circuit Court, in which it stated that, in pursuance of the order of the court, it had appeared before the District Judge in Indianapolis on Monday, February 16, and, upon the hearing in that court, the receiver had stated that it was ready and willing to deliver to the receiver appointed by the Federal court all the property and assets of Zier & Company in its hands; that it had not yet been able to make up its accounts as receiver, but was preparing the same to submit to the court, and was willing to turn over all the property to the Federal receiver; and prayed leave from the court to do so. The company further asked that upon the presentation and approval of its accounts as receiver, its resignation be accepted, and that it be fully and finally discharged.

On the same day Connor demanded of the Trust Company the property of Zier & Company in its possession, to which that company at once replied that it had that morning filed before the judge of the Floyd Circuit Court, in chambers, a report, a copy of which was attached; that the judge had stated orally that he wished the property held until the accounts of the Trust Company as receiver were rendered and passed on; that the company thought this might be done the next day, and desired, if Connor was willing, to defer action until then, because it would "relieve us of embarrassment in the premises. On the other hand, if you insist on immediate surrender of the property to you, we are bound to say that we believe that to carry out in good faith the understanding with the Honorable Judge of the United States Court of Indianapolis and our vice president, H. E. Jewett, we ought to surrender the property to you at once." Connor declined to grant further time, and the Trust Company turned over to him the plant of Zier & Company, which constituted all the property of that company except certain books and cash. Connor immediately took possession of the property and put watchmen in charge to hold the same for him.

On February 20 the United States Tube Company presented to the Floyd Circuit Court, "in vacation, at chambers," a petition signed and verified by D. A. Sachs, in which it was set forth that the Trust Company, as receiver, had wrongfully turned over and surrendered the possession of the boiler plant of Zier & Company to Connor, the receiver in bankruptcy, and was threatening to turn over to Connor all the other assets of Zier & Company in its hands. Petitioner therefore prayed that the Trust Company be cited to appear before the court, in chambers, on the afternoon of that day, and show cause why it should not be punished for contempt, and that if the court found that the Trust Company had violated its orders as represented that it be removed from its office as such receiver and a successor be appointed; and that the Trust Company be required to account immediately and turn over to its successor the property of Zier & Company. On this petition the judge of the Floyd Circuit Court on the same day entered an order removing the Trust Company from the receivership and directing it to account for the assets of Zier & Company. The order further provided for the appointment of Charles D. Kelso as receiver and directed him, on qualification, to demand of the Trust Company and Connor the immediate possession of the property of Zier & Company which came into the hands of the Trust Company as receiver, and should Connor fail or refuse to surrender the possession of the assets, that he at once report to the judge for further instructions.

Kelso, having qualified, on the same day reported to the judge at chambers that he had demanded of the Trust Company the possession of the assets of Zier & Company, and that the Trust Company had refused to surrender the possession for the reason that it had turned over the possession of the plant to Connor, and that as to the other assets it intended to account forthwith to the judge of the Floyd Circuit Court; and that he then demanded the property of Connor, who refused to surrender the same. The State court then entered an order that a writ be issued, directed to the sheriff of the county, requiring him immediately seize and deliver to Kelso all the property which Connor had in his possession, and forthwith to make a return to the court.

February 21, Connor filed a petition in the District Court, in which, after setting forth the facts as to the delivery of the possession, of the plant of Zier & Company to him, February 19, he stated that he retained possession of the same until Feburary 20, when possession was demanded of him by Kelso, as receiver appointed by the Floyd Circuit Court, which demand he refused; that he was served with a certified copy of the order of the Floyd Circuit Court, and with a writ issued by that court February 20, to the sheriff, requiring him forthwith to take possession of the plant and the assets; and that the sheriff forcibly took possession thereof, and delivered the same over to Kelso, who was then in possession.

The petition of Connor further stated:

"That this petitioner believes the above-stated proceedings were procured to be had by William W. Watts, Esq., of Louisville, Ky., who during the continuation of the New Albany Trust Company, as receiver of M. Zier & Company, represented said Trust Company as such; that said Charles D. Kelso is now represented by one D. A. Sachs, Esq., of Louisville, Ky., an attorney-at-law, and that the petitioner believes that said Sachs also assisted in procuring the orders of the said Floyd Circuit Court above set out, and the petitioner further says that he verily believes the forcible removal of said property from his possession and control as receiver appointed by this court as aforesaid, was brought about by the joint action and efforts of said Charles D. Kelso, as receiver, and Charles D. Kelso, individually, and William W. Watts, as attorney for said New Albany Trust Company, and D. A. Sachs, attorney for said Charles D. Kelso, receiver."

The petitioner further prayed that Kelso, as receiver and individually; the sheriff, the deputy sheriff, and the custodian of the plant; and William W. Watts, as attorney for the Trust Company, and D. A. Sachs, as attorney for Kelso, be required and directed to redeliver the property to petitioner, and be cited to appear and show cause why they should not be punished for contempt.

On this petition the District Court, February 21, made an order requiring the parties therein named to appear before it at Indianapolis on February 25 to show cause why they should not redeliver the property, and restraining them from in any way interfering therewith; and further ordering that the parties show cause why they should not be punished for contempt. On the same day, the United States District Attorney for the District of Indiana filed informations in the District Court against Kelso, Watts, Sachs, and others, for contempt of the District Court in disobeying and disregarding its orders. Watts and Sachs filed separate answers and pleas to the rule to show cause and to the information against them, which were traversed by the United States District Attorney.

William W. Watts, by way of response to the rule, and plea to the information, pleaded that he was not guilty of the alleged contempts stated in the rule and information, or either of them. He denied that he had committed or advised any act of contempt of the orders of the District Court, or that he had in any way, directly or indirectly, or by aiding or advising, forcibly, or in any other way, taken from the receiver in the bankruptcy proceedings the property of Zier & Company, or any part of it, or in any way, by aiding, abetting or advising, had withheld the custody of said property or any part of it. But he said that the orders of the District Court directing its receiver to take the property of Zier & Company into its custody were void because of want of jurisdiction, and that the possession of the property by Connor, receiver, was wrongfully and unlaw-

fully obtained, and the retaking under the orders and writ of the Floyd Circuit Court was a lawful and proper taking.

He then set up the various proceedings hereinbefore enumerated, and the part he took therein; adding: "All this was done solely for the purpose of preventing any possible conflict between the two jurisdictions, and it was believed by this defendant and respondent, and by the said New Albany Trust Company, and by the judge of the Floyd Circuit Court, that upon such presentation, the United States District Court would rescind its said order appointing said Frederick D. Connor, as receiver, and directing him to take possession of said property of M. Zier & Company." Under this authorization he and the Trust Company appeared at Indianapolis on Monday, February 16, and exhibited to the District Court the order of the Floyd Circuit Court authorizing them to appear, and made a full statement of the situation in the State court, after which and extended argument, the District Judge refused in any way to reconsider, modify or set aside his order, and demanded of the representative of the Trust Company whether or not it would turn over the property, and of defendant and respondent whether or not he, as counsel, for the Trust Company, would advise it to turn the property over, to Connor, as receiver. "Under these circumstances and not otherwise, and believing that the said demand of said judge of the said United States District Court was peremptory, this defendant and respondent, as counsel for the said New Albany Trust Company, stated that he would advise the said New Albany Trust Company to turn over the said property to the said Frederick D. Connor, receiver." On February 17, defendant and the vice president of the Trust Company left Indianapolis, and defendant supposed that it was not necessary for any order respecting the hearing in the District Court February 16 and 17 to be entered, and that no order would be entered. But an order was entered, a fact which he learned several days thereafter.

Defendant, further answering, alleged that on February 19 defendant and the Trust Company, receiver, appeared before the judge of the Floyd Circuit Court, in chambers, and defendant, as attorney for the Trust Company, then filed before the judge of that court a written petition and motion, setting forth what had passed at Indianapolis, in view of which he moved to strike out and expunge from the files the petition and order of February 14, 1903. This was particularly desired, because the District Judge seemed to regard the petition and order as offensive. That defendant was in every way in good faith endeavoring to carry out the understanding at Indianapolis, and advised, and at no time gave any contrary advice, the Trust Company to turn over to Connor, receiver, all the property of the Zier Company. The response and plea further averred that Watts was much embarrassed by the condition of affairs and felt that the judge of the Floyd Circuit Court might

misconstrue his actions in the premises, and before going to New Albany on February 19, 1903, requested his friend, D. A. Sachs, a lawyer residing in Louisville, Kentucky, to accompany him for the purpose of explaining his action to the judge of the Floyd Circuit Court, and this Sachs accordingly did. But the judge of that court was not satisfied, and entered a rule on Watts to show cause "why he should not be punished for contempt."

On the same day the Trust Company filed its separate petition, praying for leave to turn over the property, and for its discharge in the premises on the approval of its accounts. But the judge cited it also to show cause.

The pleading further set forth the communication of the Trust Company to Connor, receiver, and the delivery of the property to him; and that on February 20 defendant appeared before the judge of the Floyd Circuit Court in obedience to his request. On that day an order was entered removing the Trust Company as receiver, and appointing Charles D. Kelso as receiver in its stead, and authorizing him to demand of Connor the property of Zier & Company. Before that order was entered the Trust Company had, in fact, under the advice of Watts, turned over the property to Connor, and the response and plea asserted that defendant did not advise, aid, connive at, or abet the entry of said order, and had nothing whatsoever to do with it.

The response and plea further set forth the report of Kelso, and the entry of an order directing the issue of a summary writ to the sheriff of Floyd County, and stated: "This defendant and respondent did not procure the entry of said order or connive at its entry or advise its entry, and did not know of its entry until after it had been entered. He had no connection whatever with it."

Defendant and respondent reiterated that all of his acts and doings and advice after his appearance at Indianapolis were with the single purpose of having the Trust Company turn over all the property and effects to the receiver of the District Court, and that he did nothing and said nothing and advised nothing which would in any way delay the execution of that purpose; that he did nothing and said nothing with reference to the removal of the Trust Company or the removal of Kelso, and in no way did he advise anything looking to the retaking of said property from the hands of said Connor, receiver, and with all these matters he had nothing to do. Transcripts of the records were attached as exhibits.

By his separate response and plea D. A. Sachs denied the commission of any act or the advising or consenting to the commission of any act in disobedience of any order of the court in the bankruptcy case, or that he had aided, abetted or advised the taking from the receiver the property of Zier & Company, or in any way disobeyed or disregarded or aided or abetted the disregarding of the orders or decrees of the District Court or

been guilty of any contempt in the case. He said that he first heard of the proceedings on February 18 from Mr. Watts, and appeared before the State judge and attempted to explain the matter simply as his friend. He at no time advised disobedience or disregard of the orders of the District Court or the taking of the property from Connor, but on the contrary advised against that course; and "that all he did in this matter was without fee or any consideration whatever except through friendship to said Watts." He then believed and is still of the opinion that the receiver of the Floyd Circuit Court had the rightful possession ot the property, and that the District Court did not have the right or authority to interfere therewith in the summary way pursued herein. The response then set forth the various proceedings in both courts, and respondent asserted that on Monday, February 23, 1903, he learned for the first time of the making of the order in the District Court dated February 17. He denied that he had anything to do with the proceedings other than the action he took with a view of extricating Mr. Watts from the complications, and "with a view of avoiding any action that might be justly construed as a violation of the orders of either court." He denied knowledge of a petition or order for the property to be seized, and had nothing whatever to do in any way with the procuring of execution of such an order or with the forcible taking of the property or any part thereof from the receiver.

The responses and pleas having been traversed, evidence, documentary and oral, was adduced at considerable length, and on March 14, 1903, the District Court found Watts and Sachs each guilty of contempt as charged in the information and rules, and sentenced each of them to confinement in the jail of Marion County for sixty days and to pay costs.

In the meantime the property had been restored to Connor, receiver, the $9,600 had been paid over to him, and Zier & Company had been adjudicated bankrupt.

Petitions by Watts and Sachs for writs of *habeas corpus* and of certiorari, setting forth the foregoing matters and things, were thereupon presented to this court, leave given to file them, and the writs thereupon issued, and it was directed that each of the petitioners be admitted to bail on his personal recognizance in the sum of $500, to be entered into before the judge of the United States court for the District of Indiana.

Mr. Chief Justice FULLER delivered the opinion of the Court:

In this matter writs of certiorari as well as of *habeas corpus* were issued, and the record returned to us includes the evidence below, which was duly preserved by bill of exceptions. The District Court held that a flagrant contempt of the court in bankruptcy was committed on the twentieth of February by the taking the property of Zier & Company out of the pos-

session of its receiver, in whose hands, in the view of the court, it had been voluntarily placed; and that defendants Watts and Sachs were so connected with that transaction as to subject them to like condemnation.

The New Albany Trust Company was appointed receiver of the property of Zier & Company under section 1245 of the Revised Statutes of Indiana providing that this might be done, "when a corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights;" and it was directed to complete unfinished contracts but to make no new ones. The winding up of the business was contemplated and entered upon. Whether the transfers of $3,100 and $9,600 could have been overhauled in that suit we need not inquire, as they were undoubtedly acts of bankruptcy, and as such justified the application to the bankruptcy court. And the operation of the bankruptcy laws of the United States cannot be defeated by insolvent commercial corporations applying to be wound up under State statutes. The bankruptcy law is paramount, and the jurisdiction of the Federal courts in bankruptcy, when properly invoked, in the administration of the affairs of insolvent persons and corporations, is essentially exclusive. Necessarily when like proceedings in the State courts are determined by the commencement of proceedings in bankruptcy, care has to be taken to avoid collision in respect of property in possession of the State courts. Such cases are not cases of adverse possession, or of possession in enforcement of pre-existing liens, or in aid of the bankruptcy proceedings. The general rule as between courts of concurrent jurisdiction is that property already in possession of the receiver of one court cannot rightfully be taken from him without the court's consent, by the receiver of another court appointed in a subsequent suit, but that rule can have only a qualified application where winding up proceedings are superseded by those in bankruptcy as to which the jurisdiction is not concurrent. Still it obtains as a rule of comity, and accordingly the receiver of the District Court brought his appointment to the knowledge of the Floyd Circuit Court and requested the delivery of the assets.

We think there can be no reasonable doubt that the judge of the Floyd Circuit Court and Messrs. Watts and Sachs entertained the conviction in good faith that the custody of the State court could not be lawfully interfered with by the bankruptcy court by summary proceedings. Their view was that the jurisdiction of the State court having attached, that court was, in all circumstances, entitled to exercise it until voluntarily surrendered. But if the State court had taken into consideration that Zier & Company had committed acts of bankruptcy in the matter of preferential transfers; that the amendatory bankruptcy act of February 5, 1903, provided that acts of bankruptcy would exist if a person "being insolvent, applied for a receiver or trustee for his property or because of insolvency

a receiver or trustee has been put in charge of his property under the laws of a State, of a Territory, or of the United States;" and that the intent of the bankruptcy law is to place the administration of affairs of insolvents exclusively under the jurisdiction of the bankruptcy courts, it appears to us that instead of continuing the application of the Federal receiver for three weeks, the court should have directed the surrender of the property to him at once, or at least after the report of its own receiver on its return from Indianapolis.

The State court, however, did not approve of the assurance given by its receiver at Indianapolis, and refused to allow the surrender of possession, so that the delivery to Connor by the Trust Company presently made was unauthorized by the court, whose receiver and officer the Trust Company was.

We are not now dealing with the right of the District Court to take possession *in invitum*, but with the voluntary delivery of property by the officer of a court, without the court's consent, and, therefore, unlawful. We say, "voluntary," for we decline to entertain the suggestion that the District Court intimidated the Trust Company and Watts, or that members of the bar can be intimidated in the discharge of their duty.

It is true that the State court had authorized the Trust Company and Mr. Watts to appear at Indianapolis and explain the situation, but in doing so it was attempted to limit the operation of the order to a special appearance in the bankruptcy court, while by the order continuing the Federal receiver's application it was attempted to make him a party to the proceedings in the State court and bound by them. Obviously the State court did not wish its receiver to be bound by going before the District Court, and did wish the receiver of the District Court to be bound by his appearance in the State court.

On the other hand the District Court made an order on February 17, which recited the presence of the Trust Company and of Watts, the voluntary offer of the Trust Company, with the approval of Watts, in open court, to surrender possession, and then directed Connor to present a certified copy of the order of February 11 to the Trust Company, and thereupon to take possession. Mr. Watts had no notice or knowledge of this order until February 23, and Sachs first saw it on that day, though he was informed of its existence February 22.

The situation February 19 was this: The Trust Company and Watts were under rules to show cause for disregard of the orders of the State court. One had done, and the other had advised the doing, that which the State court had not consented to, and it was after it had signified its disapproval that the District Court receiver obtained possession without such consent. The State court thereupon concluded that it was entitled to restore the *status quo*, and accordingly it entered the orders of February 20, under which Connor was dispossessed.

This was a reassertion of the jurisdiction which the State court insisted it was entitled to exercise, that it had not voluntarily parted with, or been lawfully deprived of.

The petitioners were sentenced to imprisonment for contempt because of their alleged participation in this action of the State court.

It is the action of the State court that was complained of, and the essence of the alleged contempt was that, assuming that action was taken pursuant to the advice of these attorneys, they were liable to condemnation for giving such advice. In the ordinary case of advice to clients, if an attorney acts in good faith and in the honest belief that his advice is well founded and in the just interests of his client, he cannot be held liable for error in judgment. The preservation of the independence of the bar is too vital to the due administration of justice to allow of the application of any other general rule.

But here we do not have the ordinary case of advice to clients, but the case of judicial action alleged to have been induced by the advice complained of. The theory of the condemnation is that of conspiracy between the State court and the attorneys to obstruct the administration of justice and to bring the authority of the United States court into contempt.

We are of opinion that such charges ought never to be indulged in, and that the ultimate consequences of attacks of such a character by the courts of one government on the courts of another are too serious to allow them to be made.

The State court was a court of original general jurisdiction. On the face of its record its jurisdiction had been properly invoked and been properly exercised and was not open to collateral attack. Assuming that the proceedings in bankruptcy superseded further proceedings in the State court, and that nothing remained for the latter but to direct the surrender of the assets and the winding up of the accounts, the District Court was of opinion that it might by summary proceedings take the assets out of the possession of the State court. But Connor's possession was not acquired in that way. The contention is that the property was given up voluntarily by the State court receiver and not in obedience to any order entered on summary proceedings to which that receiver was a party. And the difficulty is that the receiver had no power to make the surrender when it was made. It was the representative of the State court. The property in its hands was property *in custodia legis*, and it had only such authority as was given to it by the court, and could not exceed the limits prescribed by the court. Without doubt the receiver agreed to give up the property in its hands to the receiver of the court in bankruptcy on the supposition that the State court would assent to its doing so. But the State court took a different view, and therefore the possession of Connor was from its standpoint a wrongful possession.

In order to the adequate enforcement of the provisions of the bankruptcy law, it is necessary that the powers of courts in bankruptcy should be, as they are, most comprehensive.

Section 720 of the Revised Statutes provides: "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

By section two of the bankruptcy act of 1898 the bankruptcy courts are empowered to "(3) appoint receivers or the marshals, upon application of parties in interest, in case the courts shall find it absolutely necessary, for the preservation of estates, to take charge of the property of bankrupts after the filing of the petition and until it is dismissed or the trustee is qualified;" . . . "(13) enforce obedience by bankrupts, officers, and other persons to all lawful orders, by fine or imprisonment or fine and imprisonment;" . . . "(15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this act."

The twelfth general order in bankruptcy provides: "3. Applications . . . for an injunction to stay proceedings of a court or officer of the United States or of a State shall be heard and decided by the judge."

But no writ of injunction as such was granted in this case. The order of February 11, for the appointment of a receiver, provided that the Trust Company should deliver up the property to the Federal receiver and should refrain from interfering with his possession and control of the same. That order was entered on the application of the Inland Steel Company, which had appeared in the State court at the creditors' meeting of January 24, and had interposed no objection to the order then entered for the completion of pending contracts and the running of the plant for that purpose. It was one of the contentions in support of the jurisdiction of the State court that the Inland Steel Company was thereby estopped from resorting to the bankruptcy court and obtaining the appointment of a receiver there. In *Simonson* v. *Sinsheimer*, 95 Fed. Rep. 948, it was held by the Circuit Court of Appeals for the Sixth Circuit, in a careful opinion by Taft, J. that a creditor might be estopped from filing a petition in involuntary bankruptcy, in the circumstances therein detailed, and *In re Curtis*, 91 Fed. Rep. 737, and 94 Fed. Rep. 630, in which a different conclusion was reached, was distinguished. We express no opinion on the matter, but it should be noted, in passing, as one of the elements of controversy entering into the views of counsel in the State court.

The completion of contracts by the State receiver and the procuring of materials therefor had been authorized at the creditors' meeting, in which the petitioning creditor participated, and the work had been entered upon,

and it is possible that a state of facts might have existed which would involve the application of the doctrine of estoppel to some extent.

We do not understand it to be contended that the passage of the bankruptcy act in itself suspended the statute of Indiana in relation to the appointment of receivers, but only that when the proceedings for such appointment took the form, as they did here, of winding up the affairs of the insolvent corporation, the proceedings in bankruptcy displaced those in the State court and terminated the jurisdiction of the latter. But the acceptance of that view does not necessarily involve the concession that these attorneys were guilty of contempt of the District Court because of the action of the State court.

They could not be found guilty because they believed and declared their belief that the State court had jurisdiction and that the District Court had not. Granting that they were mistaken, it does not follow that their mistaken conviction constituted contempt. In point of fact the State court agreed with them, and would certainly not have entered orders of whose validity it entertained any reasonable doubt.

The distinction between the exclusive jurisdiction of the court in bankruptcy, proceeding, as it were *in rem*, to determine the *status* of a debtor and his assets, and the jurisdiction over property subjected to particular liens, and the like, exercised by courts of concurrent jurisdiction, was probably thought by them not to apply in the circumstances existing here, and advice based on that opinion could not in itself constitute contempt.

What evidence is there that these attorneys, or either of them, gave any advice or took any action in bad faith, not in the honest discharge of their duty as counsel, but with the deliberate intent to have the Federal court set at defiance and its orders treated with contempt?

When Mr. Watts returned from Indianapolis he had been disabused of his conviction that the District Court would modify its order of February 11, when fully informed of the actual situation of the suit in the State court, and the participation in the proceedings therein of the creditor on whose application that order had been granted, and he appears to have earnestly sought to bring about the delivery over of the property, the discharge of the Trust Company, and the withdrawal from the record of the petition and order of February 14.

But he realized, when about to appear before the State court, that his promise to endeavor to bring about the surrender of the property had been made under the pressure of expediency, and not by reason of change of judgment, and that he had placed himself in the embarrassing position of acting without leave and in disregard of the limitations of the order he had himself framed and procured to be entered. This led him to request Mr. Sachs to accompany him as his friend to New Albany, and assist in representing his situation in as favorable a light as possible to the State court. It is

not disputed that Mr. Sachs visited New Albany solely in obedience to the dictates of friendship, and that he had no connection whatsoever with the litigation.

The result was, however, and it might well have been anticipated, that it appeared to the State court that its jurisdiction had been treated cavalierly by the attorney who had represented the original complainant, who had insisted that the court retained jurisdiction, and who could not deny that he was of the same opinion still. It was then, and on the twentieth, that Mr. Sachs, without the assent or connivance of Mr. Watts, unless suspicion be allowed to supply the want of proof, signed and verified a certain statement by the United States Tube Company, which represented that the Trust Company had "wrongfully, unlawfully and without leave of this court" turned over the possession to Connor, and prayed for its removal, and the appointment of a successor. This statement is recited in the order of that date entered by the judge of the State court, disallowing the application of the Trust Company to resign because of its action "without leave or permission," and stating that "the judge of this court, upon his own motion and because of the open contempt of said receiver for the orders, judgment and process of this court, does now order and direct that said receiver be and it is hereby removed from its trust." The Trust Company was ordered to account immediately for all the assets, and Kelso was appointed as receiver in succession by the judge "upon his own motion," and directed to demand possession of the property, and in case of refusal to report to the judge for further action in the premises. This was followed by the qualification of the new receiver, the demand on Connor, the report of his refusal, the issue of the writ to the sheriff, and its execution.

Mr. Sachs testified that on the 19th the judge of the Circuit Court insisted on retaining the property and in declining to approve of the promise Mr. Watts had made; that when it was known that the property had been delivered the judge still declined to discharge Mr. Watts; that on the forenoon of the 20th the judge announced that he had made up his mind to remove the Trust Company and appoint another receiver; that he, Sachs, expressed the opinion that if the judge did that the better procedure would be for the new receiver to interplead in the District Court, setting up all the facts from the beginning and obtaining a determination in that court; that the judge asked Kelso to bring the facts in respect of the delivery of the plant to the official knowledge of the court, when he would remove the Trust Company and appoint Kelso. That in the afternoon Kelso desired him to sign the statement bringing the facts to the court's notice, which he, Kelso, objected to doing, because he was to be appointed receiver, and Sachs signed it supposing the course to be followed would be an application to the District Court in the nature of an inter-

pleader; that he did not know what became of the paper and did not know, until after the commencement of the pending proceedings, what order had been entered upon it; that he did not know that any proceedings were contemplated or in course of preparation or prepared with the view of retaking the property; and did not advise or assist in any such, or believe any such would be undertaken.

In seeking to extricate Mr. Watts from his anomalous position, Sachs found himself involved, by the attitude of the State court, in similar embarrassment, for the State court adhered to its views as to jurisdiction, and insisted that it had never voluntarily yielded the position it occupied, which afforded the basis for testing the question. It does not seem to have occurred to Sachs that the mere effort to get an issue which could be transmitted to the District Court for determination subject to petition for review or such other appellate remedy as the bankruptcy act provided, could be regarded as contempt of that court, and want of intention to commit contempt is entitled to great weight in such circumstances.

There is some conflict of evidence as to Sachs' participation by way of suggestion in the preparation of papers on the twentieth, or knowledge of the preparation of the final order and writ, but, without attempting to review the evidence and pass upon its weight, we find nothing in this conflict to justify the conclusion of an intention to contemn.

State courts are entitled to the assistance of the gentlemen of the bar in the maintenance of their dignity and jurisdiction, and the fearless discharge of their duty by the latter should not be shaken by liability to punishment for mere errors of judgment in rendering such assistance.

The presumption on the verified response and plea of Sachs, which was sustained by his testimony, was that he had not been in any way a party to the dispossession of Connor, and had not advised it or expected it; that he not only had not intended any contempt, but had committed none. And as the record of the State court showed that the orders were entered by the judge of that court "upon his own motion," that presumption could not be overthrown without collaterally impeaching the record, and that we think was inadmissible.

It has been already assumed that the bankruptcy proceedings operated to suspend the further administration of the insolvent's estate in the State court, but it remained for the State court to transfer the assets, settle the accounts of its receiver and close its connection with the matter. Errors, if any, committed in so doing could be rectified in due course and in the designated way.

We cannot but express our regret at the unfortunate collision between the two courts and the belief that the considerate observance of the rule of comity is adequate to avert such occurrences.

We are of opinion that there was no legal evidence to sustain these convictions for contempt, and the order in each case must be,

Petitioner discharged.

Mr. Justice HARLAN, concurring.

I concur in that part of the opinion of the court which shows that there was no evidence whatever upon which to base a judgment for contempt against Watts and Sachs, or either of them. That view of the evidence is sufficient to dispose of the case without reference to any other question arising on the record. My concurrence in the judgment discharging the petitioners is solely on the ground just stated.

True copy.

Test:

Clerk Supreme Court, U. S.